

TITLE AND ESCROW AMENDMENTS

2015 GENERAL SESSION

STATE OF UTAH

LONG TITLE**General Description:**

This bill modifies the Insurance Code to address issues related to title and escrow insurance.

Highlighted Provisions:

This bill:

- ▶ modifies definition provisions;
- ▶ changes references from searches to title examinations;
- ▶ addresses duties of the commissioner and the Title and Escrow Commission related to title insurance;
- ▶ addresses adjudication of a title insurance matter and the imposition of penalties;
- ▶ modifies definitions related to licensing;
- ▶ modifies financial requirements for a producer;
- ▶ modifies provisions related to the requirement to be licensed;
- ▶ addresses processes related to escrow;
- ▶ addresses liability related to escrow;
- ▶ requires audits by insurers of producers;
- ▶ establishes procedures if a shortage of money is found;
- ▶ imposes requirements when an insurer cancels the appointment of a producer; and
- ▶ makes technical and conforming amendments.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

31A-1-301, as last amended by Laws of Utah 2014, Chapters 290 and 300

31A-2-402, as last amended by Laws of Utah 2013, Chapter 319

33 **31A-2-403**, as last amended by Laws of Utah 2013, Chapter 319
34 **31A-2-404**, as last amended by Laws of Utah 2013, Chapters 43 and 319
35 **31A-19a-209**, as last amended by Laws of Utah 2013, Chapter 319
36 **31A-20-110**, as last amended by Laws of Utah 2013, Chapter 319
37 **31A-23a-102**, as last amended by Laws of Utah 2014, Chapters 290 and 300
38 **31A-23a-106**, as last amended by Laws of Utah 2014, Chapter 277
39 **31A-23a-204**, as last amended by Laws of Utah 2013, Chapter 319
40 **31A-23a-406**, as last amended by Laws of Utah 2013, Chapter 319
41 **31A-23a-407**, as last amended by Laws of Utah 2013, Chapter 319
42 **31A-23a-504**, as last amended by Laws of Utah 2014, Chapter 277
43 **31A-41-202**, as last amended by Laws of Utah 2013, Chapter 319
44 **31A-41-203**, as enacted by Laws of Utah 2008, Chapter 220

45 ENACTS:

46 **31A-2-404.5**, Utah Code Annotated 1953

47

48 *Be it enacted by the Legislature of the state of Utah:*

49 Section 1. Section **31A-1-301** is amended to read:

50 **31A-1-301. Definitions.**

51 As used in this title, unless otherwise specified:

52 (1) (a) "Accident and health insurance" means insurance to provide protection against
53 economic losses resulting from:

54 (i) a medical condition including:

55 (A) a medical care expense; or

56 (B) the risk of disability;

57 (ii) accident; or

58 (iii) sickness.

59 (b) "Accident and health insurance":

60 (i) includes a contract with disability contingencies including:

61 (A) an income replacement contract;

62 (B) a health care contract;

63 (C) an expense reimbursement contract;

- 64 (D) a credit accident and health contract;
- 65 (E) a continuing care contract; and
- 66 (F) a long-term care contract; and
- 67 (ii) may provide:
- 68 (A) hospital coverage;
- 69 (B) surgical coverage;
- 70 (C) medical coverage;
- 71 (D) loss of income coverage;
- 72 (E) prescription drug coverage;
- 73 (F) dental coverage; or
- 74 (G) vision coverage.
- 75 (c) "Accident and health insurance" does not include workers' compensation insurance.
- 76 (2) "Actuary" is as defined by the commissioner by rule, made in accordance with Title
- 77 63G, Chapter 3, Utah Administrative Rulemaking Act.
- 78 (3) "Administrator" is defined in Subsection (164).
- 79 (4) "Adult" means an individual who has attained the age of at least 18 years.
- 80 (5) "Affiliate" means a person who controls, is controlled by, or is under common
- 81 control with, another person. A corporation is an affiliate of another corporation, regardless of
- 82 ownership, if substantially the same group of individuals manage the corporations.
- 83 (6) "Agency" means:
- 84 (a) a person other than an individual, including a sole proprietorship by which an
- 85 individual does business under an assumed name; and
- 86 (b) an insurance organization licensed or required to be licensed under Section
- 87 31A-23a-301, 31A-25-207, or 31A-26-209.
- 88 (7) "Alien insurer" means an insurer domiciled outside the United States.
- 89 (8) "Amendment" means an endorsement to an insurance policy or certificate.
- 90 (9) "Annuity" means an agreement to make periodical payments for a period certain or
- 91 over the lifetime of one or more individuals if the making or continuance of all or some of the
- 92 series of the payments, or the amount of the payment, is dependent upon the continuance of
- 93 human life.
- 94 (10) "Application" means a document:

(a) (i) completed by an applicant to provide information about the risk to be insured;
and

(ii) that contains information that is used by the insurer to evaluate risk and decide
whether to:

(A) insure the risk under:

(I) the coverage as originally offered; or

(II) a modification of the coverage as originally offered; or

(B) decline to insure the risk; or

(b) used by the insurer to gather information from the applicant before issuance of an
annuity contract.

(11) "Articles" or "articles of incorporation" means:

(a) the original articles;

(b) a special law;

(c) a charter;

(d) an amendment;

(e) restated articles;

(f) articles of merger or consolidation;

(g) a trust instrument;

(h) another constitutive document for a trust or other entity that is not a corporation;

and

(i) an amendment to an item listed in Subsections (11)(a) through (h).

(12) "Bail bond insurance" means a guarantee that a person will attend court when
required, up to and including surrender of the person in execution of a sentence imposed under
Subsection 77-20-7(1), as a condition to the release of that person from confinement.

(13) "Binder" is defined in Section 31A-21-102.

(14) "Blanket insurance policy" means a group policy covering a defined class of
persons:

(a) without individual underwriting or application; and

(b) that is determined by definition without designating each person covered.

(15) "Board," "board of trustees," or "board of directors" means the group of persons
with responsibility over, or management of, a corporation, however designated.

- 126 (16) "Bona fide office" means a physical office in this state:
127 (a) that is open to the public;
128 (b) that is staffed during regular business hours on regular business days; and
129 (c) at which the public may appear in person to obtain services.
- 130 (17) "Business entity" means:
131 (a) a corporation;
132 (b) an association;
133 (c) a partnership;
134 (d) a limited liability company;
135 (e) a limited liability partnership; or
136 (f) another legal entity.
- 137 (18) "Business of insurance" is defined in Subsection (88).
- 138 (19) "Business plan" means the information required to be supplied to the
139 commissioner under Subsections 31A-5-204(2)(i) and (j), including the information required
140 when these subsections apply by reference under:
141 (a) Section 31A-7-201;
142 (b) Section 31A-8-205; or
143 (c) Subsection 31A-9-205(2).
- 144 (20) (a) "Bylaws" means the rules adopted for the regulation or management of a
145 corporation's affairs, however designated.
- 146 (b) "Bylaws" includes comparable rules for a trust or other entity that is not a
147 corporation.
- 148 (21) "Captive insurance company" means:
149 (a) an insurer:
150 (i) owned by another organization; and
151 (ii) whose exclusive purpose is to insure risks of the parent organization and an
152 affiliated company; or
153 (b) in the case of a group or association, an insurer:
154 (i) owned by the insureds; and
155 (ii) whose exclusive purpose is to insure risks of:
156 (A) a member organization;

- 157 (B) a group member; or
158 (C) an affiliate of:
159 (I) a member organization; or
160 (II) a group member.
- 161 (22) "Casualty insurance" means liability insurance.
162 (23) "Certificate" means evidence of insurance given to:
163 (a) an insured under a group insurance policy; or
164 (b) a third party.
- 165 (24) "Certificate of authority" is included within the term "license."
166 (25) "Claim," unless the context otherwise requires, means a request or demand on an
167 insurer for payment of a benefit according to the terms of an insurance policy.
- 168 (26) "Claims-made coverage" means an insurance contract or provision limiting
169 coverage under a policy insuring against legal liability to claims that are first made against the
170 insured while the policy is in force.
- 171 (27) (a) "Commissioner" or "commissioner of insurance" means Utah's insurance
172 commissioner.
- 173 (b) When appropriate, the terms listed in Subsection (27)(a) apply to the equivalent
174 supervisory official of another jurisdiction.
- 175 (28) (a) "Continuing care insurance" means insurance that:
176 (i) provides board and lodging;
177 (ii) provides one or more of the following:
178 (A) a personal service;
179 (B) a nursing service;
180 (C) a medical service; or
181 (D) any other health-related service; and
182 (iii) provides the coverage described in this Subsection (28)(a) under an agreement
183 effective:
184 (A) for the life of the insured; or
185 (B) for a period in excess of one year.
- 186 (b) Insurance is continuing care insurance regardless of whether or not the board and
187 lodging are provided at the same location as a service described in Subsection (28)(a)(ii).

(29) (a) "Control," "controlling," "controlled," or "under common control" means the direct or indirect possession of the power to direct or cause the direction of the management and policies of a person. This control may be:

(i) by contract;

(ii) by common management;

(iii) through the ownership of voting securities; or

(iv) by a means other than those described in Subsections (29)(a)(i) through (iii).

(b) There is no presumption that an individual holding an official position with another person controls that person solely by reason of the position.

(c) A person having a contract or arrangement giving control is considered to have control despite the illegality or invalidity of the contract or arrangement.

(d) There is a rebuttable presumption of control in a person who directly or indirectly owns, controls, holds with the power to vote, or holds proxies to vote 10% or more of the voting securities of another person.

(30) "Controlled insurer" means a licensed insurer that is either directly or indirectly controlled by a producer.

(31) "Controlling person" means a person that directly or indirectly has the power to direct or cause to be directed, the management, control, or activities of a reinsurance intermediary.

(32) "Controlling producer" means a producer who directly or indirectly controls an insurer.

(33) (a) "Corporation" means an insurance corporation, except when referring to:

(i) a corporation doing business:

(A) as:

(I) an insurance producer;

(II) a surplus lines producer;

(III) a limited line producer;

(IV) a consultant;

(V) a managing general agent;

(VI) a reinsurance intermediary;

(VII) a third party administrator; or

219 (VIII) an adjuster; and
220 (B) under:
221 (I) Chapter 23a, Insurance Marketing - Licensing Producers, Consultants, and
222 Reinsurance Intermediaries;
223 (II) Chapter 25, Third Party Administrators; or
224 (III) Chapter 26, Insurance Adjusters; or
225 (ii) a noninsurer that is part of a holding company system under Chapter 16, Insurance
226 Holding Companies.
227 (b) "Stock corporation" means a stock insurance corporation.
228 (c) "Mutual" or "mutual corporation" means a mutual insurance corporation.
229 (34) (a) "Creditable coverage" has the same meaning as provided in federal regulations
230 adopted pursuant to the Health Insurance Portability and Accountability Act.
231 (b) "Creditable coverage" includes coverage that is offered through a public health plan
232 such as:
233 (i) the Primary Care Network Program under a Medicaid primary care network
234 demonstration waiver obtained subject to Section 26-18-3;
235 (ii) the Children's Health Insurance Program under Section 26-40-106; or
236 (iii) the Ryan White Program Comprehensive AIDS Resources Emergency Act, Pub. L.
237 101-381, and Ryan White HIV/AIDS Treatment Modernization Act of 2006, Pub. L. 109-415.
238 (35) "Credit accident and health insurance" means insurance on a debtor to provide
239 indemnity for payments coming due on a specific loan or other credit transaction while the
240 debtor has a disability.
241 (36) (a) "Credit insurance" means insurance offered in connection with an extension of
242 credit that is limited to partially or wholly extinguishing that credit obligation.
243 (b) "Credit insurance" includes:
244 (i) credit accident and health insurance;
245 (ii) credit life insurance;
246 (iii) credit property insurance;
247 (iv) credit unemployment insurance;
248 (v) guaranteed automobile protection insurance;
249 (vi) involuntary unemployment insurance;

- 250 (vii) mortgage accident and health insurance;
251 (viii) mortgage guaranty insurance; and
252 (ix) mortgage life insurance.
- 253 (37) "Credit life insurance" means insurance on the life of a debtor in connection with
254 an extension of credit that pays a person if the debtor dies.
- 255 (38) "Credit property insurance" means insurance:
256 (a) offered in connection with an extension of credit; and
257 (b) that protects the property until the debt is paid.
- 258 (39) "Credit unemployment insurance" means insurance:
259 (a) offered in connection with an extension of credit; and
260 (b) that provides indemnity if the debtor is unemployed for payments coming due on a:
261 (i) specific loan; or
262 (ii) credit transaction.
- 263 (40) "Creditor" means a person, including an insured, having a claim, whether:
264 (a) matured;
265 (b) unmatured;
266 (c) liquidated;
267 (d) unliquidated;
268 (e) secured;
269 (f) unsecured;
270 (g) absolute;
271 (h) fixed; or
272 (i) contingent.
- 273 (41) (a) "Crop insurance" means insurance providing protection against damage to
274 crops from unfavorable weather conditions, fire or lightning, flood, hail, insect infestation,
275 disease, or other yield-reducing conditions or perils that is:
276 (i) provided by the private insurance market; or
277 (ii) subsidized by the Federal Crop Insurance Corporation.
278 (b) "Crop insurance" includes multiperil crop insurance.
- 279 (42) (a) "Customer service representative" means a person that provides an insurance
280 service and insurance product information:

- 281 (i) for the customer service representative's:
282 (A) producer;
283 (B) surplus lines producer; or
284 (C) consultant employer; and
285 (ii) to the customer service representative's employer's:
286 (A) customer;
287 (B) client; or
288 (C) organization.
- 289 (b) A customer service representative may only operate within the scope of authority of
290 the customer service representative's producer, surplus lines producer, or consultant employer.
- 291 (43) "Deadline" means a final date or time:
292 (a) imposed by:
293 (i) statute;
294 (ii) rule; or
295 (iii) order; and
296 (b) by which a required filing or payment must be received by the department.
- 297 (44) "Deemer clause" means a provision under this title under which upon the
298 occurrence of a condition precedent, the commissioner is considered to have taken a specific
299 action. If the statute so provides, a condition precedent may be the commissioner's failure to
300 take a specific action.
- 301 (45) "Degree of relationship" means the number of steps between two persons
302 determined by counting the generations separating one person from a common ancestor and
303 then counting the generations to the other person.
- 304 (46) "Department" means the Insurance Department.
- 305 (47) "Director" means a member of the board of directors of a corporation.
- 306 (48) "Disability" means a physiological or psychological condition that partially or
307 totally limits an individual's ability to:
308 (a) perform the duties of:
309 (i) that individual's occupation; or
310 (ii) an occupation for which the individual is reasonably suited by education, training,
311 or experience; or

- 312 (b) perform two or more of the following basic activities of daily living:
- 313 (i) eating;
- 314 (ii) toileting;
- 315 (iii) transferring;
- 316 (iv) bathing; or
- 317 (v) dressing.
- 318 (49) "Disability income insurance" is defined in Subsection (79).
- 319 (50) "Domestic insurer" means an insurer organized under the laws of this state.
- 320 (51) "Domiciliary state" means the state in which an insurer:
- 321 (a) is incorporated;
- 322 (b) is organized; or
- 323 (c) in the case of an alien insurer, enters into the United States.
- 324 (52) (a) "Eligible employee" means:
- 325 (i) an employee who:
- 326 (A) works on a full-time basis; and
- 327 (B) has a normal work week of 30 or more hours; or
- 328 (ii) a person described in Subsection (52)(b).
- 329 (b) "Eligible employee" includes, if the individual is included under a health benefit
- 330 plan of a small employer:
- 331 (i) a sole proprietor;
- 332 (ii) a partner in a partnership; or
- 333 (iii) an independent contractor.
- 334 (c) "Eligible employee" does not include, unless eligible under Subsection (52)(b):
- 335 (i) an individual who works on a temporary or substitute basis for a small employer;
- 336 (ii) an employer's spouse; or
- 337 (iii) a dependent of an employer.
- 338 (53) "Employee" means an individual employed by an employer.
- 339 (54) "Employee benefits" means one or more benefits or services provided to:
- 340 (a) an employee; or
- 341 (b) a dependent of an employee.
- 342 (55) (a) "Employee welfare fund" means a fund:

- 343 (i) established or maintained, whether directly or through a trustee, by:
- 344 (A) one or more employers;
- 345 (B) one or more labor organizations; or
- 346 (C) a combination of employers and labor organizations; and
- 347 (ii) that provides employee benefits paid or contracted to be paid, other than income
- 348 from investments of the fund:
- 349 (A) by or on behalf of an employer doing business in this state; or
- 350 (B) for the benefit of a person employed in this state.
- 351 (b) "Employee welfare fund" includes a plan funded or subsidized by a user fee or tax
- 352 revenues.
- 353 (56) "Endorsement" means a written agreement attached to a policy or certificate to
- 354 modify the policy or certificate coverage.
- 355 (57) "Enrollment date," with respect to a health benefit plan, means:
- 356 (a) the first day of coverage; or
- 357 (b) if there is a waiting period, the first day of the waiting period.
- 358 (58) (a) "Escrow" means:
- 359 (i) a transaction that effects the sale, transfer, encumbering, or leasing of real property,
- 360 when a person not a party to the transaction, and neither having nor acquiring an interest in the
- 361 title, performs, in accordance with the written instructions or terms of the written agreement
- 362 between the parties to the transaction, any of the following actions:
- 363 (A) the explanation, holding, or creation of a document; or
- 364 (B) the receipt, deposit, and disbursement of money;
- 365 (ii) a settlement or closing involving:
- 366 (A) a mobile home;
- 367 (B) a grazing right;
- 368 (C) a water right; or
- 369 (D) other personal property authorized by the commissioner.
- 370 (b) "Escrow" does not include:
- 371 (i) the following notarial acts performed by a notary within the state:
- 372 (A) an acknowledgment;
- 373 (B) a copy certification;

(C) jurat; and

(D) an oath or affirmation;

(ii) the receipt or delivery of a document; or

(iii) the receipt of money for delivery to the escrow agent.

(59) "Escrow agent" means an agency title insurance producer meeting the requirements of Sections 31A-4-107, 31A-14-211, and 31A-23a-204, who is acting through an individual title insurance producer licensed with an escrow subline of authority as an agent and depositary who is an impartial, neutral, third party having and holding possession of money, a written instrument, a document, personal property, or other thing of value to be held until the happening of a specified event or the performance of a described condition.

(60) (a) "Excludes" is not exhaustive and does not mean that another thing is not also excluded.

(b) The items listed in a list using the term "excludes" are representative examples for use in interpretation of this title.

(61) "Exclusion" means for the purposes of accident and health insurance that an insurer does not provide insurance coverage, for whatever reason, for one of the following:

(a) a specific physical condition;

(b) a specific medical procedure;

(c) a specific disease or disorder; or

(d) a specific prescription drug or class of prescription drugs.

(62) "Expense reimbursement insurance" means insurance:

(a) written to provide a payment for an expense relating to hospital confinement resulting from illness or injury; and

(b) written:

(i) as a daily limit for a specific number of days in a hospital; and

(ii) to have a one or two day waiting period following a hospitalization.

(63) "Fidelity insurance" means insurance guaranteeing the fidelity of a person holding a position of public or private trust.

(64) (a) "Filed" means that a filing is:

(i) submitted to the department as required by and in accordance with applicable statute, rule, or filing order;

405 (ii) received by the department within the time period provided in applicable statute,
406 rule, or filing order; and

407 (iii) accompanied by the appropriate fee in accordance with:

408 (A) Section 31A-3-103; or

409 (B) rule.

410 (b) "Filed" does not include a filing that is rejected by the department because it is not
411 submitted in accordance with Subsection (64)(a).

412 (65) "Filing," when used as a noun, means an item required to be filed with the
413 department including:

414 (a) a policy;

415 (b) a rate;

416 (c) a form;

417 (d) a document;

418 (e) a plan;

419 (f) a manual;

420 (g) an application;

421 (h) a report;

422 (i) a certificate;

423 (j) an endorsement;

424 (k) an actuarial certification;

425 (l) a licensee annual statement;

426 (m) a licensee renewal application;

427 (n) an advertisement; or

428 (o) an outline of coverage.

429 (66) "First party insurance" means an insurance policy or contract in which the insurer
430 agrees to pay a claim submitted to it by the insured for the insured's losses.

431 (67) "Foreign insurer" means an insurer domiciled outside of this state, including an
432 alien insurer.

433 (68) (a) "Form" means one of the following prepared for general use:

434 (i) a policy;

435 (ii) a certificate;

- 436 (iii) an application;
437 (iv) an outline of coverage; or
438 (v) an endorsement.
- 439 (b) "Form" does not include a document specially prepared for use in an individual
440 case.
- 441 (69) "Franchise insurance" means an individual insurance policy provided through a
442 mass marketing arrangement involving a defined class of persons related in some way other
443 than through the purchase of insurance.
- 444 (70) "General lines of authority" include:
- 445 (a) the general lines of insurance in Subsection (71);
446 (b) title insurance under one of the following sublines of authority:
447 (i) [search] title examination, including authority to act as a title marketing
448 representative;
- 449 (ii) escrow, including authority to act as a title marketing representative; and
450 (iii) title marketing representative only;
- 451 (c) surplus lines;
452 (d) workers' compensation; and
453 (e) another line of insurance that the commissioner considers necessary to recognize in
454 the public interest.
- 455 (71) "General lines of insurance" include:
- 456 (a) accident and health;
457 (b) casualty;
458 (c) life;
459 (d) personal lines;
460 (e) property; and
461 (f) variable contracts, including variable life and annuity.
- 462 (72) "Group health plan" means an employee welfare benefit plan to the extent that the
463 plan provides medical care:
- 464 (a) (i) to an employee; or
465 (ii) to a dependent of an employee; and
466 (b) (i) directly;

467 (ii) through insurance reimbursement; or

468 (iii) through another method.

469 (73) (a) "Group insurance policy" means a policy covering a group of persons that is
470 issued:

471 (i) to a policyholder on behalf of the group; and

472 (ii) for the benefit of a member of the group who is selected under a procedure defined
473 in:

474 (A) the policy; or

475 (B) an agreement that is collateral to the policy.

476 (b) A group insurance policy may include a member of the policyholder's family or a
477 dependent.

478 (74) "Guaranteed automobile protection insurance" means insurance offered in
479 connection with an extension of credit that pays the difference in amount between the
480 insurance settlement and the balance of the loan if the insured automobile is a total loss.

481 (75) (a) Except as provided in Subsection (75)(b), "health benefit plan" means a policy
482 or certificate that:

483 (i) provides health care insurance;

484 (ii) provides major medical expense insurance; or

485 (iii) is offered as a substitute for hospital or medical expense insurance, such as:

486 (A) a hospital confinement indemnity; or

487 (B) a limited benefit plan.

488 (b) "Health benefit plan" does not include a policy or certificate that:

489 (i) provides benefits solely for:

490 (A) accident;

491 (B) dental;

492 (C) income replacement;

493 (D) long-term care;

494 (E) a Medicare supplement;

495 (F) a specified disease;

496 (G) vision; or

497 (H) a short-term limited duration; or

498 (ii) is offered and marketed as supplemental health insurance.

499 (76) "Health care" means any of the following intended for use in the diagnosis,
500 treatment, mitigation, or prevention of a human ailment or impairment:

501 (a) a professional service;

502 (b) a personal service;

503 (c) a facility;

504 (d) equipment;

505 (e) a device;

506 (f) supplies; or

507 (g) medicine.

508 (77) (a) "Health care insurance" or "health insurance" means insurance providing:

509 (i) a health care benefit; or

510 (ii) payment of an incurred health care expense.

511 (b) "Health care insurance" or "health insurance" does not include accident and health
512 insurance providing a benefit for:

513 (i) replacement of income;

514 (ii) short-term accident;

515 (iii) fixed indemnity;

516 (iv) credit accident and health;

517 (v) supplements to liability;

518 (vi) workers' compensation;

519 (vii) automobile medical payment;

520 (viii) no-fault automobile;

521 (ix) equivalent self-insurance; or

522 (x) a type of accident and health insurance coverage that is a part of or attached to
523 another type of policy.

524 (78) "Health Insurance Portability and Accountability Act" means the Health Insurance
525 Portability and Accountability Act of 1996, Pub. L. 104-191, 110 Stat. 1936, as amended.

526 (79) "Income replacement insurance" or "disability income insurance" means insurance
527 written to provide payments to replace income lost from accident or sickness.

528 (80) "Indemnity" means the payment of an amount to offset all or part of an insured

529 loss.

530 (81) "Independent adjuster" means an insurance adjuster required to be licensed under
531 Section 31A-26-201 who engages in insurance adjusting as a representative of an insurer.

532 (82) "Independently procured insurance" means insurance procured under Section
533 31A-15-104.

534 (83) "Individual" means a natural person.

535 (84) "Inland marine insurance" includes insurance covering:

536 (a) property in transit on or over land;

537 (b) property in transit over water by means other than boat or ship;

538 (c) bailee liability;

539 (d) fixed transportation property such as bridges, electric transmission systems, radio
540 and television transmission towers and tunnels; and

541 (e) personal and commercial property floaters.

542 (85) "Insolvency" means that:

543 (a) an insurer is unable to pay its debts or meet its obligations as the debts and
544 obligations mature;

545 (b) an insurer's total adjusted capital is less than the insurer's mandatory control level
546 RBC under Subsection 31A-17-601(8)(c); or

547 (c) an insurer is determined to be hazardous under this title.

548 (86) (a) "Insurance" means:

549 (i) an arrangement, contract, or plan for the transfer of a risk or risks from one or more
550 persons to one or more other persons; or

551 (ii) an arrangement, contract, or plan for the distribution of a risk or risks among a
552 group of persons that includes the person seeking to distribute that person's risk.

553 (b) "Insurance" includes:

554 (i) a risk distributing arrangement providing for compensation or replacement for
555 damages or loss through the provision of a service or a benefit in kind;

556 (ii) a contract of guaranty or suretyship entered into by the guarantor or surety as a
557 business and not as merely incidental to a business transaction; and

558 (iii) a plan in which the risk does not rest upon the person who makes an arrangement,
559 but with a class of persons who have agreed to share the risk.

(87) "Insurance adjuster" means a person who directs or conducts the investigation, negotiation, or settlement of a claim under an insurance policy other than life insurance or an annuity, on behalf of an insurer, policyholder, or a claimant under an insurance policy.

(88) "Insurance business" or "business of insurance" includes:

(a) providing health care insurance by an organization that is or is required to be licensed under this title;

(b) providing a benefit to an employee in the event of a contingency not within the control of the employee, in which the employee is entitled to the benefit as a right, which benefit may be provided either:

(i) by a single employer or by multiple employer groups; or

(ii) through one or more trusts, associations, or other entities;

(c) providing an annuity:

(i) including an annuity issued in return for a gift; and

(ii) except an annuity provided by a person specified in Subsections 31A-22-1305(2) and (3);

(d) providing the characteristic services of a motor club as outlined in Subsection (116);

(e) providing another person with insurance;

(f) making as insurer, guarantor, or surety, or proposing to make as insurer, guarantor, or surety, a contract or policy of title insurance;

(g) transacting or proposing to transact any phase of title insurance, including:

(i) solicitation;

(ii) negotiation preliminary to execution;

(iii) execution of a contract of title insurance;

(iv) insuring; and

(v) transacting matters subsequent to the execution of the contract and arising out of the contract, including reinsurance;

(h) transacting or proposing a life settlement; and

(i) doing, or proposing to do, any business in substance equivalent to Subsections (88)(a) through (h) in a manner designed to evade this title.

(89) "Insurance consultant" or "consultant" means a person who:

- 591 (a) advises another person about insurance needs and coverages;
- 592 (b) is compensated by the person advised on a basis not directly related to the insurance
- 593 placed; and
- 594 (c) except as provided in Section 31A-23a-501, is not compensated directly or
- 595 indirectly by an insurer or producer for advice given.
- 596 (90) "Insurance holding company system" means a group of two or more affiliated
- 597 persons, at least one of whom is an insurer.
- 598 (91) (a) "Insurance producer" or "producer" means a person licensed or required to be
- 599 licensed under the laws of this state to sell, solicit, or negotiate insurance.
- 600 (b) (i) "Producer for the insurer" means a producer who is compensated directly or
- 601 indirectly by an insurer for selling, soliciting, or negotiating an insurance product of that
- 602 insurer.
- 603 (ii) "Producer for the insurer" may be referred to as an "agent."
- 604 (c) (i) "Producer for the insured" means a producer who:
- 605 (A) is compensated directly and only by an insurance customer or an insured; and
- 606 (B) receives no compensation directly or indirectly from an insurer for selling,
- 607 soliciting, or negotiating an insurance product of that insurer to an insurance customer or
- 608 insured.
- 609 (ii) "Producer for the insured" may be referred to as a "broker."
- 610 (92) (a) "Insured" means a person to whom or for whose benefit an insurer makes a
- 611 promise in an insurance policy and includes:
- 612 (i) a policyholder;
- 613 (ii) a subscriber;
- 614 (iii) a member; and
- 615 (iv) a beneficiary.
- 616 (b) The definition in Subsection (92)(a):
- 617 (i) applies only to this title; and
- 618 (ii) does not define the meaning of this word as used in an insurance policy or
- 619 certificate.
- 620 (93) (a) "Insurer" means a person doing an insurance business as a principal including:
- 621 (i) a fraternal benefit society;

622 (ii) an issuer of a gift annuity other than an annuity specified in Subsections
623 31A-22-1305(2) and (3);
624 (iii) a motor club;
625 (iv) an employee welfare plan; and
626 (v) a person purporting or intending to do an insurance business as a principal on that
627 person's own account.

628 (b) "Insurer" does not include a governmental entity to the extent the governmental
629 entity is engaged in an activity described in Section 31A-12-107.

630 (94) "Interinsurance exchange" is defined in Subsection (147).

631 (95) "Involuntary unemployment insurance" means insurance:
632 (a) offered in connection with an extension of credit; and
633 (b) that provides indemnity if the debtor is involuntarily unemployed for payments
634 coming due on a:
635 (i) specific loan; or
636 (ii) credit transaction.

637 (96) "Large employer," in connection with a health benefit plan, means an employer
638 who, with respect to a calendar year and to a plan year:
639 (a) employed an average of at least 51 eligible employees on each business day during
640 the preceding calendar year; and
641 (b) employs at least two employees on the first day of the plan year.

642 (97) "Late enrollee," with respect to an employer health benefit plan, means an
643 individual whose enrollment is a late enrollment.

644 (98) "Late enrollment," with respect to an employer health benefit plan, means
645 enrollment of an individual other than:
646 (a) on the earliest date on which coverage can become effective for the individual
647 under the terms of the plan; or
648 (b) through special enrollment.

649 (99) (a) Except for a retainer contract or legal assistance described in Section
650 31A-1-103, "legal expense insurance" means insurance written to indemnify or pay for a
651 specified legal expense.

652 (b) "Legal expense insurance" includes an arrangement that creates a reasonable

653 expectation of an enforceable right.

654 (c) "Legal expense insurance" does not include the provision of, or reimbursement for,
655 legal services incidental to other insurance coverage.

656 (100) (a) "Liability insurance" means insurance against liability:

657 (i) for death, injury, or disability of a human being, or for damage to property,
658 exclusive of the coverages under:

659 (A) Subsection (110) for medical malpractice insurance;

660 (B) Subsection (138) for professional liability insurance; and

661 (C) Subsection (173) for workers' compensation insurance;

662 (ii) for a medical, hospital, surgical, and funeral benefit to a person other than the
663 insured who is injured, irrespective of legal liability of the insured, when issued with or
664 supplemental to insurance against legal liability for the death, injury, or disability of a human
665 being, exclusive of the coverages under:

666 (A) Subsection (110) for medical malpractice insurance;

667 (B) Subsection (138) for professional liability insurance; and

668 (C) Subsection (173) for workers' compensation insurance;

669 (iii) for loss or damage to property resulting from an accident to or explosion of a
670 boiler, pipe, pressure container, machinery, or apparatus;

671 (iv) for loss or damage to property caused by:

672 (A) the breakage or leakage of a sprinkler, water pipe, or water container; or

673 (B) water entering through a leak or opening in a building; or

674 (v) for other loss or damage properly the subject of insurance not within another kind
675 of insurance as defined in this chapter, if the insurance is not contrary to law or public policy.

676 (b) "Liability insurance" includes:

677 (i) vehicle liability insurance;

678 (ii) residential dwelling liability insurance; and

679 (iii) making inspection of, and issuing a certificate of inspection upon, an elevator,
680 boiler, machinery, or apparatus of any kind when done in connection with insurance on the
681 elevator, boiler, machinery, or apparatus.

682 (101) (a) "License" means authorization issued by the commissioner to engage in an
683 activity that is part of or related to the insurance business.

(b) "License" includes a certificate of authority issued to an insurer.

(102) (a) "Life insurance" means:

(i) insurance on a human life; and

(ii) insurance pertaining to or connected with human life.

(b) The business of life insurance includes:

(i) granting a death benefit;

(ii) granting an annuity benefit;

(iii) granting an endowment benefit;

(iv) granting an additional benefit in the event of death by accident;

(v) granting an additional benefit to safeguard the policy against lapse; and

(vi) providing an optional method of settlement of proceeds.

(103) "Limited license" means a license that:

(a) is issued for a specific product of insurance; and

(b) limits an individual or agency to transact only for that product or insurance.

(104) "Limited line credit insurance" includes the following forms of insurance:

(a) credit life;

(b) credit accident and health;

(c) credit property;

(d) credit unemployment;

(e) involuntary unemployment;

(f) mortgage life;

(g) mortgage guaranty;

(h) mortgage accident and health;

(i) guaranteed automobile protection; and

(j) another form of insurance offered in connection with an extension of credit that:

(i) is limited to partially or wholly extinguishing the credit obligation; and

(ii) the commissioner determines by rule should be designated as a form of limited line credit insurance.

(105) "Limited line credit insurance producer" means a person who sells, solicits, or negotiates one or more forms of limited line credit insurance coverage to an individual through a master, corporate, group, or individual policy.

- 715 (106) "Limited line insurance" includes:
- 716 (a) bail bond;
- 717 (b) limited line credit insurance;
- 718 (c) legal expense insurance;
- 719 (d) motor club insurance;
- 720 (e) car rental related insurance;
- 721 (f) travel insurance;
- 722 (g) crop insurance;
- 723 (h) self-service storage insurance;
- 724 (i) guaranteed asset protection waiver;
- 725 (j) portable electronics insurance; and
- 726 (k) another form of limited insurance that the commissioner determines by rule should
- 727 be designated a form of limited line insurance.
- 728 (107) "Limited lines authority" includes the lines of insurance listed in Subsection
- 729 (106).
- 730 (108) "Limited lines producer" means a person who sells, solicits, or negotiates limited
- 731 lines insurance.
- 732 (109) (a) "Long-term care insurance" means an insurance policy or rider advertised,
- 733 marketed, offered, or designated to provide coverage:
- 734 (i) in a setting other than an acute care unit of a hospital;
- 735 (ii) for not less than 12 consecutive months for a covered person on the basis of:
- 736 (A) expenses incurred;
- 737 (B) indemnity;
- 738 (C) prepayment; or
- 739 (D) another method;
- 740 (iii) for one or more necessary or medically necessary services that are:
- 741 (A) diagnostic;
- 742 (B) preventative;
- 743 (C) therapeutic;
- 744 (D) rehabilitative;
- 745 (E) maintenance; or

- 746 (F) personal care; and
747 (iv) that may be issued by:
748 (A) an insurer;
749 (B) a fraternal benefit society;
750 (C) (I) a nonprofit health hospital; and
751 (II) a medical service corporation;
752 (D) a prepaid health plan;
753 (E) a health maintenance organization; or
754 (F) an entity similar to the entities described in Subsections (109)(a)(iv)(A) through (E)
755 to the extent that the entity is otherwise authorized to issue life or health care insurance.
- 756 (b) "Long-term care insurance" includes:
757 (i) any of the following that provide directly or supplement long-term care insurance:
758 (A) a group or individual annuity or rider; or
759 (B) a life insurance policy or rider;
760 (ii) a policy or rider that provides for payment of benefits on the basis of:
761 (A) cognitive impairment; or
762 (B) functional capacity; or
763 (iii) a qualified long-term care insurance contract.
- 764 (c) "Long-term care insurance" does not include:
765 (i) a policy that is offered primarily to provide basic Medicare supplement coverage;
766 (ii) basic hospital expense coverage;
767 (iii) basic medical/surgical expense coverage;
768 (iv) hospital confinement indemnity coverage;
769 (v) major medical expense coverage;
770 (vi) income replacement or related asset-protection coverage;
771 (vii) accident only coverage;
772 (viii) coverage for a specified:
773 (A) disease; or
774 (B) accident;
775 (ix) limited benefit health coverage; or
776 (x) a life insurance policy that accelerates the death benefit to provide the option of a

777 lump sum payment:

778 (A) if the following are not conditioned on the receipt of long-term care:

779 (I) benefits; or

780 (II) eligibility; and

781 (B) the coverage is for one or more the following qualifying events:

782 (I) terminal illness;

783 (II) medical conditions requiring extraordinary medical intervention; or

784 (III) permanent institutional confinement.

785 (110) "Medical malpractice insurance" means insurance against legal liability incident
786 to the practice and provision of a medical service other than the practice and provision of a
787 dental service.

788 (111) "Member" means a person having membership rights in an insurance
789 corporation.

790 (112) "Minimum capital" or "minimum required capital" means the capital that must be
791 constantly maintained by a stock insurance corporation as required by statute.

792 (113) "Mortgage accident and health insurance" means insurance offered in connection
793 with an extension of credit that provides indemnity for payments coming due on a mortgage
794 while the debtor has a disability.

795 (114) "Mortgage guaranty insurance" means surety insurance under which a mortgagee
796 or other creditor is indemnified against losses caused by the default of a debtor.

797 (115) "Mortgage life insurance" means insurance on the life of a debtor in connection
798 with an extension of credit that pays if the debtor dies.

799 (116) "Motor club" means a person:

800 (a) licensed under:

801 (i) Chapter 5, Domestic Stock and Mutual Insurance Corporations;

802 (ii) Chapter 11, Motor Clubs; or

803 (iii) Chapter 14, Foreign Insurers; and

804 (b) that promises for an advance consideration to provide for a stated period of time
805 one or more:

806 (i) legal services under Subsection 31A-11-102(1)(b);

807 (ii) bail services under Subsection 31A-11-102(1)(c); or

- 808 (iii) (A) trip reimbursement;
809 (B) towing services;
810 (C) emergency road services;
811 (D) stolen automobile services;
812 (E) a combination of the services listed in Subsections (116)(b)(iii)(A) through (D); or
813 (F) other services given in Subsections 31A-11-102(1)(b) through (f).
814 (117) "Mutual" means a mutual insurance corporation.
815 (118) "Network plan" means health care insurance:
816 (a) that is issued by an insurer; and
817 (b) under which the financing and delivery of medical care is provided, in whole or in
818 part, through a defined set of providers under contract with the insurer, including the financing
819 and delivery of an item paid for as medical care.
820 (119) "Nonparticipating" means a plan of insurance under which the insured is not
821 entitled to receive a dividend representing a share of the surplus of the insurer.
822 (120) "Ocean marine insurance" means insurance against loss of or damage to:
823 (a) ships or hulls of ships;
824 (b) goods, freight, cargoes, merchandise, effects, disbursements, profits, money,
825 securities, choses in action, evidences of debt, valuable papers, bottomry, respondentia
826 interests, or other cargoes in or awaiting transit over the oceans or inland waterways;
827 (c) earnings such as freight, passage money, commissions, or profits derived from
828 transporting goods or people upon or across the oceans or inland waterways; or
829 (d) a vessel owner or operator as a result of liability to employees, passengers, bailors,
830 owners of other vessels, owners of fixed objects, customs or other authorities, or other persons
831 in connection with maritime activity.
832 (121) "Order" means an order of the commissioner.
833 (122) "Outline of coverage" means a summary that explains an accident and health
834 insurance policy.
835 (123) "Participating" means a plan of insurance under which the insured is entitled to
836 receive a dividend representing a share of the surplus of the insurer.
837 (124) "Participation," as used in a health benefit plan, means a requirement relating to
838 the minimum percentage of eligible employees that must be enrolled in relation to the total

- 839 number of eligible employees of an employer reduced by each eligible employee who
840 voluntarily declines coverage under the plan because the employee:
- 841 (a) has other group health care insurance coverage; or
 - 842 (b) receives:
 - 843 (i) Medicare, under the Health Insurance for the Aged Act, Title XVIII of the Social
844 Security Amendments of 1965; or
 - 845 (ii) another government health benefit.
- 846 (125) "Person" includes:
- 847 (a) an individual;
 - 848 (b) a partnership;
 - 849 (c) a corporation;
 - 850 (d) an incorporated or unincorporated association;
 - 851 (e) a joint stock company;
 - 852 (f) a trust;
 - 853 (g) a limited liability company;
 - 854 (h) a reciprocal;
 - 855 (i) a syndicate; or
 - 856 (j) another similar entity or combination of entities acting in concert.
- 857 (126) "Personal lines insurance" means property and casualty insurance coverage sold
858 for primarily noncommercial purposes to:
- 859 (a) an individual; or
 - 860 (b) a family.
- 861 (127) "Plan sponsor" is as defined in 29 U.S.C. Sec. 1002(16)(B).
- 862 (128) "Plan year" means:
- 863 (a) the year that is designated as the plan year in:
 - 864 (i) the plan document of a group health plan; or
 - 865 (ii) a summary plan description of a group health plan;
 - 866 (b) if the plan document or summary plan description does not designate a plan year or
867 there is no plan document or summary plan description:
 - 868 (i) the year used to determine deductibles or limits;
 - 869 (ii) the policy year, if the plan does not impose deductibles or limits on a yearly basis;

870 or

871 (iii) the employer's taxable year if:

872 (A) the plan does not impose deductibles or limits on a yearly basis; and

873 (B) (I) the plan is not insured; or

874 (II) the insurance policy is not renewed on an annual basis; or

875 (c) in a case not described in Subsection (128)(a) or (b), the calendar year.

876 (129) (a) "Policy" means a document, including an attached endorsement or application

877 that:

878 (i) purports to be an enforceable contract; and

879 (ii) memorializes in writing some or all of the terms of an insurance contract.

880 (b) "Policy" includes a service contract issued by:

881 (i) a motor club under Chapter 11, Motor Clubs;

882 (ii) a service contract provided under Chapter 6a, Service Contracts; and

883 (iii) a corporation licensed under:

884 (A) Chapter 7, Nonprofit Health Service Insurance Corporations; or

885 (B) Chapter 8, Health Maintenance Organizations and Limited Health Plans.

886 (c) "Policy" does not include:

887 (i) a certificate under a group insurance contract; or

888 (ii) a document that does not purport to have legal effect.

889 (130) "Policyholder" means a person who controls a policy, binder, or oral contract by

890 ownership, premium payment, or otherwise.

891 (131) "Policy illustration" means a presentation or depiction that includes

892 nonguaranteed elements of a policy of life insurance over a period of years.

893 (132) "Policy summary" means a synopsis describing the elements of a life insurance

894 policy.

895 (133) "PPACA" means the Patient Protection and Affordable Care Act, Pub. L. No.

896 111-148 and the Health Care Education Reconciliation Act of 2010, Pub. L. No. 111-152, and

897 related federal regulations and guidance.

898 (134) "Preexisting condition," with respect to a health benefit plan:

899 (a) means a condition that was present before the effective date of coverage, whether or

900 not medical advice, diagnosis, care, or treatment was recommended or received before that day;

901 and

902 (b) does not include a condition indicated by genetic information unless an actual

903 diagnosis of the condition by a physician has been made.

904 (135) (a) "Premium" means the monetary consideration for an insurance policy.

905 (b) "Premium" includes, however designated:

906 (i) an assessment;

907 (ii) a membership fee;

908 (iii) a required contribution; or

909 (iv) monetary consideration.

910 (c) (i) "Premium" does not include consideration paid to a third party administrator for

911 the third party administrator's services.

912 (ii) "Premium" includes an amount paid by a third party administrator to an insurer for

913 insurance on the risks administered by the third party administrator.

914 (136) "Principal officers" for a corporation means the officers designated under

915 Subsection 31A-5-203(3).

916 (137) "Proceeding" includes an action or special statutory proceeding.

917 (138) "Professional liability insurance" means insurance against legal liability incident

918 to the practice of a profession and provision of a professional service.

919 (139) (a) Except as provided in Subsection (139)(b), "property insurance" means

920 insurance against loss or damage to real or personal property of every kind and any interest in

921 that property:

922 (i) from all hazards or causes; and

923 (ii) against loss consequential upon the loss or damage including vehicle

924 comprehensive and vehicle physical damage coverages.

925 (b) "Property insurance" does not include:

926 (i) inland marine insurance; and

927 (ii) ocean marine insurance.

928 (140) "Qualified long-term care insurance contract" or "federally tax qualified

929 long-term care insurance contract" means:

930 (a) an individual or group insurance contract that meets the requirements of Section

931 7702B(b), Internal Revenue Code; or

932 (b) the portion of a life insurance contract that provides long-term care insurance:

933 (i) (A) by rider; or

934 (B) as a part of the contract; and

935 (ii) that satisfies the requirements of Sections 7702B(b) and (e), Internal Revenue

936 Code.

937 (141) "Qualified United States financial institution" means an institution that:

938 (a) is:

939 (i) organized under the laws of the United States or any state; or

940 (ii) in the case of a United States office of a foreign banking organization, licensed
941 under the laws of the United States or any state;

942 (b) is regulated, supervised, and examined by a United States federal or state authority
943 having regulatory authority over a bank or trust company; and

944 (c) meets the standards of financial condition and standing that are considered
945 necessary and appropriate to regulate the quality of a financial institution whose letters of credit
946 will be acceptable to the commissioner as determined by:

947 (i) the commissioner by rule; or

948 (ii) the Securities Valuation Office of the National Association of Insurance

949 Commissioners.

950 (142) (a) "Rate" means:

951 (i) the cost of a given unit of insurance; or

952 (ii) for property or casualty insurance, that cost of insurance per exposure unit either
953 expressed as:

954 (A) a single number; or

955 (B) a pure premium rate, adjusted before the application of individual risk variations
956 based on loss or expense considerations to account for the treatment of:

957 (I) expenses;

958 (II) profit; and

959 (III) individual insurer variation in loss experience.

960 (b) "Rate" does not include a minimum premium.

961 (143) (a) Except as provided in Subsection (143)(b), "rate service organization" means
962 a person who assists an insurer in rate making or filing by:

- 963 (i) collecting, compiling, and furnishing loss or expense statistics;
964 (ii) recommending, making, or filing rates or supplementary rate information; or
965 (iii) advising about rate questions, except as an attorney giving legal advice.
- 966 (b) "Rate service organization" does not mean:
- 967 (i) an employee of an insurer;
968 (ii) a single insurer or group of insurers under common control;
969 (iii) a joint underwriting group; or
970 (iv) an individual serving as an actuarial or legal consultant.
- 971 (144) "Rating manual" means any of the following used to determine initial and
972 renewal policy premiums:
- 973 (a) a manual of rates;
974 (b) a classification;
975 (c) a rate-related underwriting rule; and
976 (d) a rating formula that describes steps, policies, and procedures for determining
977 initial and renewal policy premiums.
- 978 (145) (a) "Rebate" means a licensee paying, allowing, giving, or offering to pay, allow,
979 or give, directly or indirectly:
- 980 (i) a refund of premium or portion of premium;
981 (ii) a refund of commission or portion of commission;
982 (iii) a refund of all or a portion of a consultant fee; or
983 (iv) providing services or other benefits not specified in an insurance or annuity
984 contract.
- 985 (b) "Rebate" does not include:
- 986 (i) a refund due to termination or changes in coverage;
987 (ii) a refund due to overcharges made in error by the licensee; or
988 (iii) savings or wellness benefits as provided in the contract by the licensee.
- 989 (146) "Received by the department" means:
- 990 (a) the date delivered to and stamped received by the department, if delivered in
991 person;
992 (b) the post mark date, if delivered by mail;
993 (c) the delivery service's post mark or pickup date, if delivered by a delivery service;

- 994 (d) the received date recorded on an item delivered, if delivered by:
995 (i) facsimile;
996 (ii) email; or
997 (iii) another electronic method; or
998 (e) a date specified in:
999 (i) a statute;
1000 (ii) a rule; or
1001 (iii) an order.
- 1002 (147) "Reciprocal" or "interinsurance exchange" means an unincorporated association
1003 of persons:
1004 (a) operating through an attorney-in-fact common to all of the persons; and
1005 (b) exchanging insurance contracts with one another that provide insurance coverage
1006 on each other.
- 1007 (148) "Reinsurance" means an insurance transaction where an insurer, for
1008 consideration, transfers any portion of the risk it has assumed to another insurer. In referring to
1009 reinsurance transactions, this title sometimes refers to:
1010 (a) the insurer transferring the risk as the "ceding insurer"; and
1011 (b) the insurer assuming the risk as the:
1012 (i) "assuming insurer"; or
1013 (ii) "assuming reinsurer."
- 1014 (149) "Reinsurer" means a person licensed in this state as an insurer with the authority
1015 to assume reinsurance.
- 1016 (150) "Residential dwelling liability insurance" means insurance against liability
1017 resulting from or incident to the ownership, maintenance, or use of a residential dwelling that is
1018 a detached single family residence or multifamily residence up to four units.
- 1019 (151) (a) "Retrocession" means reinsurance with another insurer of a liability assumed
1020 under a reinsurance contract.
- 1021 (b) A reinsurer "retrocedes" when the reinsurer reinsures with another insurer part of a
1022 liability assumed under a reinsurance contract.
- 1023 (152) "Rider" means an endorsement to:
1024 (a) an insurance policy; or

- 1025 (b) an insurance certificate.
- 1026 (153) (a) "Security" means a:
- 1027 (i) note;
- 1028 (ii) stock;
- 1029 (iii) bond;
- 1030 (iv) debenture;
- 1031 (v) evidence of indebtedness;
- 1032 (vi) certificate of interest or participation in a profit-sharing agreement;
- 1033 (vii) collateral-trust certificate;
- 1034 (viii) preorganization certificate or subscription;
- 1035 (ix) transferable share;
- 1036 (x) investment contract;
- 1037 (xi) voting trust certificate;
- 1038 (xii) certificate of deposit for a security;
- 1039 (xiii) certificate of interest of participation in an oil, gas, or mining title or lease or in
- 1040 payments out of production under such a title or lease;
- 1041 (xiv) commodity contract or commodity option;
- 1042 (xv) certificate of interest or participation in, temporary or interim certificate for,
- 1043 receipt for, guarantee of, or warrant or right to subscribe to or purchase any of the items listed
- 1044 in Subsections (153)(a)(i) through (xiv); or
- 1045 (xvi) another interest or instrument commonly known as a security.
- 1046 (b) "Security" does not include:
- 1047 (i) any of the following under which an insurance company promises to pay money in a
- 1048 specific lump sum or periodically for life or some other specified period:
- 1049 (A) insurance;
- 1050 (B) an endowment policy; or
- 1051 (C) an annuity contract; or
- 1052 (ii) a burial certificate or burial contract.
- 1053 (154) "Secondary medical condition" means a complication related to an exclusion
- 1054 from coverage in accident and health insurance.
- 1055 (155) (a) "Self-insurance" means an arrangement under which a person provides for

1056 spreading its own risks by a systematic plan.

1057 (b) Except as provided in this Subsection (155), "self-insurance" does not include an
1058 arrangement under which a number of persons spread their risks among themselves.

1059 (c) "Self-insurance" includes:

1060 (i) an arrangement by which a governmental entity undertakes to indemnify an
1061 employee for liability arising out of the employee's employment; and

1062 (ii) an arrangement by which a person with a managed program of self-insurance and
1063 risk management undertakes to indemnify its affiliates, subsidiaries, directors, officers, or
1064 employees for liability or risk that is related to the relationship or employment.

1065 (d) "Self-insurance" does not include an arrangement with an independent contractor.

1066 (156) "Sell" means to exchange a contract of insurance:

1067 (a) by any means;

1068 (b) for money or its equivalent; and

1069 (c) on behalf of an insurance company.

1070 (157) "Short-term care insurance" means an insurance policy or rider advertised,
1071 marketed, offered, or designed to provide coverage that is similar to long-term care insurance,
1072 but that provides coverage for less than 12 consecutive months for each covered person.

1073 (158) "Significant break in coverage" means a period of 63 consecutive days during
1074 each of which an individual does not have creditable coverage.

1075 (159) "Small employer" means, in connection with a health benefit plan and with
1076 respect to a calendar year and to a plan year, an employer who:

1077 (a) employed at least one employee but not more than an average of 50 eligible
1078 employees on business days during the preceding calendar year; and

1079 (b) employs at least one employee on the first day of the plan year.

1080 (160) "Special enrollment period," in connection with a health benefit plan, has the
1081 same meaning as provided in federal regulations adopted pursuant to the Health Insurance
1082 Portability and Accountability Act.

1083 (161) (a) "Subsidiary" of a person means an affiliate controlled by that person either
1084 directly or indirectly through one or more affiliates or intermediaries.

1085 (b) "Wholly owned subsidiary" of a person is a subsidiary of which all of the voting
1086 shares are owned by that person either alone or with its affiliates, except for the minimum

1087 number of shares the law of the subsidiary's domicile requires to be owned by directors or
1088 others.

1089 (162) Subject to Subsection (86)(b), "surety insurance" includes:

1090 (a) a guarantee against loss or damage resulting from the failure of a principal to pay or
1091 perform the principal's obligations to a creditor or other obligee;

1092 (b) bail bond insurance; and

1093 (c) fidelity insurance.

1094 (163) (a) "Surplus" means the excess of assets over the sum of paid-in capital and
1095 liabilities.

1096 (b) (i) "Permanent surplus" means the surplus of an insurer or organization that is
1097 designated by the insurer or organization as permanent.

1098 (ii) Sections 31A-5-211, 31A-7-201, 31A-8-209, 31A-9-209, and 31A-14-205 require
1099 that insurers or organizations doing business in this state maintain specified minimum levels of
1100 permanent surplus.

1101 (iii) Except for assessable mutuals, the minimum permanent surplus requirement is the
1102 same as the minimum required capital requirement that applies to stock insurers.

1103 (c) "Excess surplus" means:

1104 (i) for a life insurer, accident and health insurer, health organization, or property and
1105 casualty insurer as defined in Section 31A-17-601, the lesser of:

1106 (A) that amount of an insurer's or health organization's total adjusted capital that
1107 exceeds the product of:

1108 (I) 2.5; and

1109 (II) the sum of the insurer's or health organization's minimum capital or permanent
1110 surplus required under Section 31A-5-211, 31A-9-209, or 31A-14-205; or

1111 (B) that amount of an insurer's or health organization's total adjusted capital that
1112 exceeds the product of:

1113 (I) 3.0; and

1114 (II) the authorized control level RBC as defined in Subsection 31A-17-601(8)(a); and

1115 (ii) for a monoline mortgage guaranty insurer, financial guaranty insurer, or title insurer
1116 that amount of an insurer's paid-in-capital and surplus that exceeds the product of:

1117 (A) 1.5; and

1118 (B) the insurer's total adjusted capital required by Subsection 31A-17-609(1).
1119 (164) "Third party administrator" or "administrator" means a person who collects
1120 charges or premiums from, or who, for consideration, adjusts or settles claims of residents of
1121 the state in connection with insurance coverage, annuities, or service insurance coverage,
1122 except:

- 1123 (a) a union on behalf of its members;
- 1124 (b) a person administering a:
 - 1125 (i) pension plan subject to the federal Employee Retirement Income Security Act of
1126 1974;
 - 1127 (ii) governmental plan as defined in Section 414(d), Internal Revenue Code; or
 - 1128 (iii) nonelecting church plan as described in Section 410(d), Internal Revenue Code;
- 1129 (c) an employer on behalf of the employer's employees or the employees of one or
1130 more of the subsidiary or affiliated corporations of the employer;
- 1131 (d) an insurer licensed under the following, but only for a line of insurance for which
1132 the insurer holds a license in this state:
 - 1133 (i) Chapter 5, Domestic Stock and Mutual Insurance Corporations;
 - 1134 (ii) Chapter 7, Nonprofit Health Service Insurance Corporations;
 - 1135 (iii) Chapter 8, Health Maintenance Organizations and Limited Health Plans;
 - 1136 (iv) Chapter 9, Insurance Fraternal; or
 - 1137 (v) Chapter 14, Foreign Insurers;
- 1138 (e) a person:
 - 1139 (i) licensed or exempt from licensing under:
 - 1140 (A) Chapter 23a, Insurance Marketing - Licensing Producers, Consultants, and
1141 Reinsurance Intermediaries; or
 - 1142 (B) Chapter 26, Insurance Adjusters; and
 - 1143 (ii) whose activities are limited to those authorized under the license the person holds
1144 or for which the person is exempt; or
 - 1145 (f) an institution, bank, or financial institution:
 - 1146 (i) that is:
 - 1147 (A) an institution whose deposits and accounts are to any extent insured by a federal
1148 deposit insurance agency, including the Federal Deposit Insurance Corporation or National

1149 Credit Union Administration; or

1150 (B) a bank or other financial institution that is subject to supervision or examination by
1151 a federal or state banking authority; and

1152 (ii) that does not adjust claims without a third party administrator license.

1153 (165) "Title insurance" means the insuring, guaranteeing, or indemnifying of an owner
1154 of real or personal property or the holder of liens or encumbrances on that property, or others
1155 interested in the property against loss or damage suffered by reason of liens or encumbrances
1156 upon, defects in, or the unmarketability of the title to the property, or invalidity or
1157 unenforceability of any liens or encumbrances on the property.

1158 (166) "Total adjusted capital" means the sum of an insurer's or health organization's
1159 statutory capital and surplus as determined in accordance with:

1160 (a) the statutory accounting applicable to the annual financial statements required to be
1161 filed under Section 31A-4-113; and

1162 (b) another item provided by the RBC instructions, as RBC instructions is defined in
1163 Section 31A-17-601.

1164 (167) (a) "Trustee" means "director" when referring to the board of directors of a
1165 corporation.

1166 (b) "Trustee," when used in reference to an employee welfare fund, means an
1167 individual, firm, association, organization, joint stock company, or corporation, whether acting
1168 individually or jointly and whether designated by that name or any other, that is charged with
1169 or has the overall management of an employee welfare fund.

1170 (168) (a) "Unauthorized insurer," "unadmitted insurer," or "nonadmitted insurer"
1171 means an insurer:

1172 (i) not holding a valid certificate of authority to do an insurance business in this state;
1173 or

1174 (ii) transacting business not authorized by a valid certificate.

1175 (b) "Admitted insurer" or "authorized insurer" means an insurer:

1176 (i) holding a valid certificate of authority to do an insurance business in this state; and

1177 (ii) transacting business as authorized by a valid certificate.

1178 (169) "Underwrite" means the authority to accept or reject risk on behalf of the insurer.

1179 (170) "Vehicle liability insurance" means insurance against liability resulting from or

incident to ownership, maintenance, or use of a land vehicle or aircraft, exclusive of a vehicle comprehensive or vehicle physical damage coverage under Subsection (139).

(171) "Voting security" means a security with voting rights, and includes a security convertible into a security with a voting right associated with the security.

(172) "Waiting period" for a health benefit plan means the period that must pass before coverage for an individual, who is otherwise eligible to enroll under the terms of the health benefit plan, can become effective.

(173) "Workers' compensation insurance" means:

(a) insurance for indemnification of an employer against liability for compensation based on:

(i) a compensable accidental injury; and

(ii) occupational disease disability;

(b) employer's liability insurance incidental to workers' compensation insurance and written in connection with workers' compensation insurance; and

(c) insurance assuring to a person entitled to workers' compensation benefits the compensation provided by law.

Section 2. Section **31A-2-402** is amended to read:

31A-2-402. Definitions.

As used in this part:

(1) "Commission" means the Title and Escrow Commission created in Section 31A-2-403.

(2) "Concurrence" means the entities given a concurring role must jointly agree for the action to be taken.

(3) "Dual licensed title licensee" means a title licensee who holds:

(a) an individual title insurance producer license as a title licensee; and

(b) a license or certificate under:

(i) Title 61, Chapter 2c, Utah Residential Mortgage Practices and Licensing Act;

(ii) Title 61, Chapter 2f, Real Estate Licensing and Practices Act; or

(iii) Title 61, Chapter 2g, Real Estate Appraiser Licensing and Certification Act.

(4) "Real Estate Commission" means the Real Estate Commission created in Section 61-2f-103.

1211 (5) "Title insurance matter" means a matter related to:
 1212 (a) title insurance;
 1213 (b) an escrow conducted by an agency title insurance producer;
 1214 (c) licensing of an applicant to be a title licensee;
 1215 (d) conduct of a title licensee; or
 1216 (e) approval of a continuing education program required by Section 31A-23a-202.
 1217 ~~[(5)]~~ (6) "Title licensee" means a person licensed under this title as:
 1218 (a) an agency title insurance producer with a title insurance line of authority and a title
 1219 examination or escrow subline of authority;
 1220 (b) an individual title insurance producer with:
 1221 (i) a ~~general~~ title insurance line of authority; ~~or~~ and
 1222 (ii) a specific category of authority for title insurance; or
 1223 (c) a title insurance adjuster.
 1224 Section 3. Section **31A-2-403** is amended to read:
 1225 **31A-2-403. Title and Escrow Commission created.**
 1226 (1) (a) Subject to Subsection (1)(b), there is created within the department the Title and
 1227 Escrow Commission that is comprised of five members appointed by the governor with the
 1228 consent of the Senate as follows ~~[beginning July 1, 2013]~~:
 1229 (i) two members shall be employees of a title insurer;
 1230 (ii) two members shall:
 1231 (A) be employees of a Utah agency title insurance producer;
 1232 (B) be or have been licensed under the title insurance line of authority;
 1233 (C) as of the day on which the member is appointed, be or have been licensed with the
 1234 ~~[search]~~ title examination or escrow subline of authority for at least five years; and
 1235 (D) as of the day on which the member is appointed, not be from the same county as
 1236 another member appointed under this Subsection (1)(a)(ii); and
 1237 (iii) one member shall be a member of the general public from any county in the state.
 1238 (b) No more than one commission member may be appointed from a single company
 1239 or an affiliate or subsidiary of the company.
 1240 (2) (a) Subject to Subsection (2)(c), a commission member shall file with the
 1241 commissioner a disclosure of any position of employment or ownership interest that the

1242 commission member has with respect to a person that is subject to the jurisdiction of the
1243 commissioner.

1244 (b) The disclosure statement required by this Subsection (2) shall be:

1245 (i) filed by no later than the day on which the person begins that person's appointment;
1246 and

1247 (ii) amended when a significant change occurs in any matter required to be disclosed
1248 under this Subsection (2).

1249 (c) A commission member is not required to disclose an ownership interest that the
1250 commission member has if the ownership interest is in a publicly traded company or held as
1251 part of a mutual fund, trust, or similar investment.

1252 (3) (a) Except as required by Subsection (3)(b), as terms of current commission
1253 members expire, the governor shall appoint each new commission member to a four-year term
1254 ending on June 30.

1255 (b) Notwithstanding the requirements of Subsection (3)(a), the governor shall, at the
1256 time of appointment, adjust the length of terms to ensure that the terms of the commission
1257 members are staggered so that approximately half of the members appointed under Subsection
1258 (1)(a)(i) and half of the members appointed under Subsection (1)(a)(ii) are appointed every two
1259 years.

1260 (c) A commission member may not serve more than one consecutive term.

1261 (d) When a vacancy occurs in the membership for any reason, the governor, with the
1262 consent of the Senate, shall appoint a replacement for the unexpired term.

1263 (e) Notwithstanding the other provisions of this Subsection (3), a commission member
1264 serves until a successor is appointed by the governor with the consent of the Senate.

1265 (4) A commission member may not receive compensation or benefits for the
1266 commission member's service, but may receive per diem and travel expenses in accordance
1267 with:

1268 (a) Section 63A-3-106;

1269 (b) Section 63A-3-107; and

1270 (c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and
1271 63A-3-107.

1272 (5) Members of the commission shall annually select one commission member to serve

1273 as chair.

1274 (6) (a) The commission shall meet at least monthly. Notwithstanding Section
1275 52-4-207, a commission member shall physically attend a regularly scheduled monthly meeting
1276 of the commission and may not attend through electronic means. A commission member may
1277 attend subcommittee meetings, emergency meetings, or other not regularly scheduled meetings
1278 electronically in accordance with Section 52-4-207.

1279 (b) The commissioner may call additional meetings:

1280 (i) at the commissioner's discretion;

1281 (ii) upon the request of the chair of the commission; or

1282 (iii) upon the written request of three or more commission members.

1283 (c) (i) Three commission members constitute a quorum for the transaction of business.

1284 (ii) The action of a majority of the commission members when a quorum is present is
1285 the action of the commission.

1286 (7) The commissioner shall staff the commission.

1287 Section 4. Section **31A-2-404** is amended to read:

1288 **31A-2-404. Duties of the commissioner and Title and Escrow Commission.**

1289 (1) (a) Notwithstanding the other provisions of this chapter, to the extent provided in
1290 this part, the commissioner shall administer and enforce the provisions in this title related to:

1291 ~~[(a)]~~ (i) title insurance; and

1292 ~~[(b)]~~ (ii) escrow conducted by a title licensee or title insurer.

1293 (b) Unless a provision of this title grants specific authority to the commission, the
1294 commissioner has authority over the implementation of this title related to title insurance
1295 matters. When a provision requires concurrence between the commission and commissioner,
1296 and concurrence cannot be reached, the commissioner has final authority.

1297 (c) Subject to Section 31A-2-404.5, the commissioner may impose a penalty:

1298 (i) under this title related to a title insurance matter;

1299 (ii) after investigation by the commissioner in accordance with Part 3, Procedures and
1300 Enforcement;

1301 (iii) after consultation with the commission at the commissioner's discretion; and

1302 (iv) that is enforced by the commissioner.

1303 (2) The commission shall:

1304 (a) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, and
1305 subject to Subsection (4), make rules for the administration of the provisions in this title related
1306 to title insurance including rules related to:

1307 (i) rating standards and rating methods for a title licensee, as provided in Section
1308 31A-19a-209;

1309 (ii) the licensing for a title licensee, including the licensing requirements of Section
1310 31A-23a-204;

1311 (iii) continuing education requirements of Section 31A-23a-202; and
1312 (iv) standards of conduct for a title licensee;

1313 (b) concur in the issuance and renewal of a license in accordance with Section
1314 31A-23a-105 or 31A-26-203;

1315 (c) in accordance with Section 31A-3-103, establish, with the concurrence of the
1316 commissioner, the fees imposed by this title on a title licensee;

1317 (d) in accordance with Section 31A-23a-415 determine, after consulting with the
1318 commissioner, the assessment on a title insurer as defined in Section 31A-23a-415;

1319 (e) subject to Section 31A-2-404.5, conduct an administrative hearing not delegated by
1320 the commission to an administrative law judge related to ~~[the:]~~ a title insurance matter;

1321 ~~[(i) licensing of an applicant;]~~
1322 ~~[(ii) conduct of a title licensee; or]~~
1323 ~~[(iii) approval of a continuing education program required by Section 31A-23a-202;]~~

1324 (f) with the concurrence of the commissioner, approve a continuing education program
1325 required by Section 31A-23a-202;

1326 ~~[(g) with the concurrence of the commissioner, impose a penalty.]~~
1327 ~~[(i) under this title related to:]~~
1328 ~~[(A) title insurance; or]~~
1329 ~~[(B) escrow conducted by a title licensee;]~~
1330 ~~[(ii) after investigation by the commissioner in accordance with Part 3, Procedures and~~
1331 ~~Enforcement; and]~~
1332 ~~[(iii) that is enforced by the commissioner;]~~
1333 ~~[(h) advise the commissioner on the administration and enforcement of any matter~~
1334 ~~affecting the title insurance industry;]~~

(g) in the first monthly meeting of every calendar quarter, advise the commissioner of the most critical matters affecting the title insurance industry and requesting the commissioner to direct the department's investigative resources to investigate and enforce these matters;

(h) in accordance with Section 31A-23a-204, participate in the annual license testing evaluation conducted by the commissioner's test administrator and:

(i) approve written comments related to the evaluation by no later than the second scheduled commission meeting following the evaluation; and

(ii) post the written comments described in Subsection (2)(g)(i) on the commissioner's website and distribute the written comments by email to current title licensees and underwriters of title insurance in Utah;

(i) advise the commissioner on matters affecting the commissioner's budget related to title insurance; and

(j) perform other duties as provided in this title.

(3) The commission may make rules establishing an examination for a license that will satisfy Section 31A-23a-204:

(a) after consultation with the commissioner and the commissioner's test administrator;

(b) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act; and

(c) subject to Subsection (4).

(4) The commission may make a rule under this title only:

(a) with the concurrence of the commissioner except that if concurrence cannot be reached, the commissioner has final authority; and

(b) if at the time the commission files its proposed rule and rule analysis with the Division of Administrative Rules in accordance with Section 63G-3-301, the commission provides the Real Estate Commission that same information.

(5) (a) The commissioner shall annually report the information described in Subsection (5)(b) in writing to the commission.

(b) The information required to be reported under this Subsection (5):

(i) may not identify a person; and

(ii) shall include:

(A) the number of complaints the commissioner receives with regard to transactions involving title insurance or a title licensee during the calendar year immediately proceeding the

1366 report;

1367 (B) the type of complaints described in Subsection (5)(b)(ii)(A); and

1368 (C) for each complaint described in Subsection (5)(b)(ii)(A):

1369 (I) any action taken by the commissioner with regard to the complaint; and

1370 (II) the time-period beginning the day on which a complaint is made and ending the
1371 day on which the commissioner determines it will take no further action with regard to the
1372 complaint.

1373 ~~[(6) The commission may not impose a penalty in a manner inconsistent with~~
1374 ~~Subsection (2)(g) or make a rule that conflicts with Subsection (2)(g).]~~

1375 Section 5. Section **31A-2-404.5** is enacted to read:

1376 **31A-2-404.5. Adjudication of a title insurance matter -- Penalties.**

1377 (1) A title insurance matter referred for enforcement shall be resolved by:

1378 (a) an informal adjudicative proceeding;

1379 (i) pursuant to rules made by the commission in accordance with Section 31A-2-404;

1380 and

1381 (ii) with consultation with the commission at the discretion of the commissioner; or

1382 (b) a formal adjudicative proceeding conducted either by the commission or an

1383 administrative law judge in accordance with Section 31A-2-404.

1384 (2) (a) For a formal adjudicative proceeding related to a title insurance matter, the
1385 commissioner shall:

1386 (i) set a date, time, and place for an administrative hearing; and

1387 (ii) inform the commission of the hearing date, time, and place.

1388 (b) After being informed of a hearing date, time, and place, the commission shall:

1389 (i) delegate the conduct of the administrative hearing to an administrative law judge; or

1390 (ii) conduct the administrative hearing.

1391 (c) For an administrative hearing conducted by the commission, the commission shall:

1392 (i) accept the date, time, and place set by the commissioner or set a different date, time,

1393 and place for the administrative hearing;

1394 (ii) notify the following of the date, time, and place of the administrative hearing:

1395 (A) the one or more respondents;

1396 (B) the department's administrative law judge; and

1397 (C) the assistant attorney general that represents the department in administrative
1398 hearings related to title insurance matters; and

1399 (iii) conduct the hearing pursuant to rules adopted by the commission in accordance
1400 with Section 31A-2-404 for adjudicative proceedings under this title.

1401 (d) The department's administrative law judge shall assist the commission in the
1402 commission's conduct of an administrative hearing.

1403 (3) (a) If after an formal adjudicative hearing a violation is found, the commission or
1404 administrative law judge shall recommend to the commissioner a penalty for the violation.

1405 (b) The commissioner may impose the penalty recommended under Subsection (3)(a),
1406 impose a different penalty, or impose no penalty.

1407 (4) A member of the commission that has a conflict of interest in the subject matter of
1408 an informal or formal proceeding shall be recused from the proceeding in accordance with rules
1409 made by the commission in accordance with Section 31A-2-404.

1410 Section 6. Section **31A-19a-209** is amended to read:

1411 **31A-19a-209. Special provisions for title insurance.**

1412 (1) (a) (i) The Title and Escrow Commission shall adopt rules subject to Section
1413 31A-2-404, establishing rate standards and rating methods for individual title insurance
1414 producers and agency title insurance producers.

1415 (ii) The commissioner shall determine compliance with rate standards and rating
1416 methods for title insurance insurers, individual title insurance producers, and agency title
1417 insurance producers.

1418 (b) In addition to the considerations in determining compliance with rate standards and
1419 rating methods as set forth in Sections 31A-19a-201 and 31A-19a-202, including for title
1420 insurers, the commissioner and the Title and Escrow Commission shall consider the costs and
1421 expenses incurred by title insurance insurers, individual title insurance producers, and agency
1422 title insurance producers peculiar to the business of title insurance including:

1423 (i) the maintenance of title plants; and

1424 (ii) the ~~[searching and]~~ examining of public records to determine insurability of title to
1425 real redevelopment property.

1426 (2) (a) Every title insurance insurer or agency title insurance producer, and every
1427 individual title insurance producer who is not designated by an agency title insurance producer,

1428 shall file with the commissioner:

1429 (i) a schedule of the escrow charges that the title insurance insurer, individual title
1430 insurance producer, or agency title insurance producer proposes to use in this state for services
1431 performed in connection with the issuance of policies of title insurance; and

1432 (ii) any changes to the schedule of the escrow charges described in Subsection (2)(a)(i).

1433 (b) Except for a schedule filed by a title insurance insurer under this Subsection (2), a
1434 schedule filed under this Subsection (2) is subject to review by the Title and Escrow
1435 Commission.

1436 (c) (i) The schedule of escrow charges required to be filed by Subsection (2)(a)(i) takes
1437 effect on the day on which the schedule of escrow charges is filed.

1438 (ii) Any changes to the schedule of the escrow charges required to be filed by
1439 Subsection (2)(a)(ii) take effect on the day specified in the change to the schedule of escrow
1440 charges except that the effective date may not be less than 30 calendar days after the day on
1441 which the change to the schedule of escrow charges is filed.

1442 (3) A title insurance insurer, individual title insurance producer, or agency title
1443 insurance producer may not file or use any rate or other charge relating to the business of title
1444 insurance, including rates or charges filed for escrow that would cause the title insurance
1445 company, individual title insurance producer, or agency title insurance producer to:

1446 (a) operate at less than the cost of doing:

1447 (i) the insurance business; or

1448 (ii) the escrow business; or

1449 (b) fail to adequately underwrite a title insurance policy.

1450 (4) (a) All or any of the schedule of rates or schedule of charges, including the schedule
1451 of escrow charges, may be changed or amended at any time, subject to the limitations in this
1452 Subsection (4).

1453 (b) Each change or amendment shall:

1454 (i) be filed with the commissioner, subject to review by the Title and Escrow
1455 Commission; and

1456 (ii) state the effective date of the change or amendment, which may not be less than 30
1457 calendar days after the day on which the change or amendment is filed.

1458 (c) Any change or amendment remains in force for a period of at least 90 calendar days

1459 from the change or amendment's effective date.

1460 (5) While the schedule of rates and schedule of charges are effective, a copy of each
1461 shall be:

1462 (a) retained in each of the offices of:

1463 (i) the title insurance insurer in this state;

1464 (ii) the title insurance insurer's individual title insurance producers or agency title
1465 insurance producers in this state; and

1466 (b) upon request, furnished to the public.

1467 (6) Except in accordance with the schedules of rates and charges filed with the
1468 commissioner, a title insurance insurer, individual title insurance producer, or agency title
1469 insurance producer may not make or impose any premium or other charge:

1470 (a) in connection with the issuance of a policy of title insurance; or

1471 (b) for escrow services performed in connection with the issuance of a policy of title
1472 insurance.

1473 Section 7. Section **31A-20-110** is amended to read:

1474 **31A-20-110. Underwriting rules for title insurance.**

1475 (1) A title insurance policy may not be written until the title insurer or its individual
1476 title insurance producer or agency title insurance producer has conducted a reasonable [search
1477 and] title examination of the title and has made a determination of insurability of title under
1478 sound underwriting principles. Evidence of this [search] title examination and reasonable
1479 determination shall be retained in the files of the title insurer or its individual title insurance
1480 producer or agency title insurance producer for not less than 15 years after the policy has been
1481 issued, either in its original form or as recorded by any process which can accurately and
1482 reliably reproduce the original. This section does not apply to a company assuming liability
1483 through a contract of reinsurance, or to a company acting as coinsurer, if another coinsuring
1484 company has complied with this section.

1485 (2) A title insurance policy may not be issued except by a title insurer, an individual
1486 title insurance producer who is appointed by an insurer, or agency title insurance producer
1487 licensed under Section 31A-23a-105.

1488 (3) This section is enforceable only by the commissioner. It does not create, eliminate,
1489 or modify any private cause of action or remedy.

1490 Section 8. Section **31A-23a-102** is amended to read:

1491 **31A-23a-102. Definitions.**

1492 As used in this chapter:

1493 (1) "Bail bond producer" is as defined in Section 31A-35-102.

1494 (2) "Home state" means a state or territory of the United States or the District of

1495 Columbia in which an insurance producer:

1496 (a) maintains the insurance producer's principal:

1497 (i) place of residence; or

1498 (ii) place of business; and

1499 (b) is licensed to act as an insurance producer.

1500 (3) "Insurer" is as defined in Section 31A-1-301, except that the following persons or

1501 similar persons are not insurers for purposes of Part 7, Producer Controlled Insurers:

1502 (a) a risk retention group as defined in:

1503 (i) the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-499;

1504 (ii) the Risk Retention Act, 15 U.S.C. Sec. 3901 et seq.; and

1505 (iii) Chapter 15, Part 2, Risk Retention Groups Act;

1506 (b) a residual market pool;

1507 (c) a joint underwriting authority or association; and

1508 (d) a captive insurer.

1509 (4) "License" is defined in Section 31A-1-301.

1510 (5) (a) "Managing general agent" means a person that:

1511 (i) manages all or part of the insurance business of an insurer, including the

1512 management of a separate division, department, or underwriting office;

1513 (ii) acts as an agent for the insurer whether it is known as a managing general agent,

1514 manager, or other similar term;

1515 (iii) produces and underwrites an amount of gross direct written premium equal to, or

1516 more than, 5% of the policyholder surplus as reported in the last annual statement of the insurer

1517 in any one quarter or year:

1518 (A) with or without the authority;

1519 (B) separately or together with an affiliate; and

1520 (C) directly or indirectly; and

1521 (iv) (A) adjusts or pays claims in excess of an amount determined by the
1522 commissioner; or
1523 (B) negotiates reinsurance on behalf of the insurer.
1524 (b) Notwithstanding Subsection (5)(a), the following persons may not be considered as
1525 managing general agent for the purposes of this chapter:
1526 (i) an employee of the insurer;
1527 (ii) a United States manager of the United States branch of an alien insurer;
1528 (iii) an underwriting manager that, pursuant to contract:
1529 (A) manages all the insurance operations of the insurer;
1530 (B) is under common control with the insurer;
1531 (C) is subject to Chapter 16, Insurance Holding Companies; and
1532 (D) is not compensated based on the volume of premiums written; and
1533 (iv) the attorney-in-fact authorized by and acting for the subscribers of a reciprocal
1534 insurer or inter-insurance exchange under powers of attorney.
1535 (6) "Material Fact," as it relates to escrow, includes a condition that:
1536 (a) affects the value or use of the property;
1537 (b) involves the substitution or change in a principal;
1538 (c) involves the change or delay in the purchaser's financing;
1539 (d) involves the seller not being on title;
1540 (e) involves the seller, if not a natural person, being not properly authorized to dispose
1541 of property;
1542 (f) involves the buyer, if not a natural person, being not properly authorized to acquire
1543 property; or
1544 (g) is a suspicion of fraud.
1545 ~~[(6)]~~ (7) "Negotiate" means the act of conferring directly with or offering advice
1546 directly to a purchaser or prospective purchaser of a particular contract of insurance concerning
1547 a substantive benefit, term, or condition of the contract if the person engaged in that act:
1548 (a) sells insurance; or
1549 (b) obtains insurance from insurers for purchasers.
1550 (8) "Principal to an escrow" means a person that is the buyer, seller, or lender in a real
1551 property escrow who are executing and performing the mutual escrow instructions and who are

1552 making the conditional deliveries in connection with the escrow.

1553 ~~[(7)]~~ (9) "Reinsurance intermediary" means:

1554 (a) a reinsurance intermediary-broker; or

1555 (b) a reinsurance intermediary-manager.

1556 ~~[(8)]~~ (10) "Reinsurance intermediary-broker" means a person other than an officer or

1557 employee of the ceding insurer, firm, association, or corporation who solicits, negotiates, or

1558 places reinsurance cessions or retrocessions on behalf of a ceding insurer without the authority

1559 or power to bind reinsurance on behalf of the insurer.

1560 ~~[(9)]~~ (11) (a) "Reinsurance intermediary-manager" means a person who:

1561 (i) has authority to bind or who manages all or part of the assumed reinsurance

1562 business of a reinsurer, including the management of a separate division, department, or

1563 underwriting office; and

1564 (ii) acts as an agent for the reinsurer whether the person is known as a reinsurance

1565 intermediary-manager, manager, or other similar term.

1566 (b) Notwithstanding Subsection ~~[(9)]~~ (11)(a), the following persons may not be

1567 considered reinsurance intermediary-managers for the purpose of this chapter with respect to

1568 the reinsurer:

1569 (i) an employee of the reinsurer;

1570 (ii) a United States manager of the United States branch of an alien reinsurer;

1571 (iii) an underwriting manager that, pursuant to contract:

1572 (A) manages all the reinsurance operations of the reinsurer;

1573 (B) is under common control with the reinsurer;

1574 (C) is subject to Chapter 16, Insurance Holding Companies; and

1575 (D) is not compensated based on the volume of premiums written; and

1576 (iv) the manager of a group, association, pool, or organization of insurers that:

1577 (A) engage in joint underwriting or joint reinsurance; and

1578 (B) are subject to examination by the insurance commissioner of the state in which the

1579 manager's principal business office is located.

1580 ~~[(10)]~~ (12) "Resident" is as defined by rule made by the commissioner in accordance

1581 with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

1582 ~~[(11)]~~ "Search" means a license subline of authority in conjunction with the title

1583 ~~insurance line of authority that allows a person to issue title insurance commitments or policies~~
1584 ~~on behalf of a title insurer.]~~

1585 ~~[(12)]~~ (13) "Sell" means to exchange a contract of insurance:

1586 (a) by any means;

1587 (b) for money or its equivalent; and

1588 (c) on behalf of an insurance company.

1589 ~~[(13)]~~ (14) "Solicit" means:

1590 (a) attempting to sell insurance;

1591 (b) asking or urging a person to apply for:

1592 (i) a particular kind of insurance; and

1593 (ii) insurance from a particular insurance company;

1594 (c) advertising insurance, including advertising for the purpose of obtaining leads for
1595 the sale of insurance; or

1596 (d) holding oneself out as being in the insurance business.

1597 ~~[(14)]~~ (15) "Terminate" means:

1598 (a) the cancellation of the relationship between:

1599 (i) an individual licensee or agency licensee and a particular insurer; or

1600 (ii) an individual licensee and a particular agency licensee; or

1601 (b) the termination of:

1602 (i) an individual licensee's or agency licensee's authority to transact insurance on behalf
1603 of a particular insurance company; or

1604 (ii) an individual licensee's authority to transact insurance on behalf of a particular
1605 agency licensee.

1606 (16) "Title examination" means the process of an individual determining the
1607 insurability of real property and the binding of or commitment for coverage.

1608 ~~[(15)]~~ (17) "Title marketing representative" means a person who:

1609 (a) represents a title insurer in soliciting, requesting, or negotiating the placing of:

1610 (i) title insurance; or

1611 (ii) escrow services; and

1612 (b) does not have ~~[a search]~~ a title examination or escrow license as provided in

1613 Section 31A-23a-106.

1614 ~~[(16)]~~ (18) "Uniform application" means the version of the National Association of
1615 Insurance Commissioners' uniform application for resident and nonresident producer licensing
1616 at the time the application is filed.

1617 ~~[(17)]~~ (19) "Uniform business entity application" means the version of the National
1618 Association of Insurance Commissioners' uniform business entity application for resident and
1619 nonresident business entities at the time the application is filed.

1620 Section 9. Section **31A-23a-106** is amended to read:

1621 **31A-23a-106. License types.**

1622 (1) (a) A resident or nonresident license issued under this chapter shall be issued under
1623 the license types described under Subsection (2).

1624 (b) A license type and a line of authority pertaining to a license type describe the type
1625 of licensee and the lines of business that a licensee may sell, solicit, or negotiate. A license
1626 type is intended to describe the matters to be considered under any education, examination, and
1627 training required of a license applicant under Sections 31A-23a-108, 31A-23a-202, and
1628 31A-23a-203.

1629 (2) (a) A producer license type includes the following lines of authority:

1630 (i) life insurance, including a nonvariable contract;

1631 (ii) variable contracts, including variable life and annuity, if the producer has the life
1632 insurance line of authority;

1633 (iii) accident and health insurance, including a contract issued to a policyholder under
1634 Chapter 7, Nonprofit Health Service Insurance Corporations, or Chapter 8, Health Maintenance
1635 Organizations and Limited Health Plans;

1636 (iv) property insurance;

1637 (v) casualty insurance, including a surety or other bond;

1638 (vi) title insurance under one or more of the following categories:

1639 (A) ~~[search]~~ title examination, including authority to act as a title marketing
1640 representative;

1641 (B) escrow, including authority to act as a title marketing representative; and

1642 (C) title marketing representative only; and

1643 (vii) personal lines insurance.

1644 (b) A surplus lines producer license type includes the following lines of authority:

- 1645 (i) property insurance, if the person holds an underlying producer license with the
1646 property line of insurance; and
- 1647 (ii) casualty insurance, if the person holds an underlying producer license with the
1648 casualty line of authority.
- 1649 (c) A limited line producer license type includes the following limited lines of
1650 authority:
- 1651 (i) limited line credit insurance;
- 1652 (ii) travel insurance, as set forth in Part 9, Travel Insurance Act;
- 1653 (iii) motor club insurance;
- 1654 (iv) car rental related insurance;
- 1655 (v) legal expense insurance;
- 1656 (vi) crop insurance;
- 1657 (vii) self-service storage insurance;
- 1658 (viii) bail bond producer;
- 1659 (ix) guaranteed asset protection waiver; and
- 1660 (x) portable electronics insurance.
- 1661 (d) A consultant license type includes the following lines of authority:
- 1662 (i) life insurance, including a nonvariable contract;
- 1663 (ii) variable contracts, including variable life and annuity, if the consultant has the life
1664 insurance line of authority;
- 1665 (iii) accident and health insurance, including a contract issued to a policyholder under
1666 Chapter 7, Nonprofit Health Service Insurance Corporations, or Chapter 8, Health Maintenance
1667 Organizations and Limited Health Plans;
- 1668 (iv) property insurance;
- 1669 (v) casualty insurance, including a surety or other bond; and
- 1670 (vi) personal lines insurance.
- 1671 (e) A managing general agent license type includes the following lines of authority:
- 1672 (i) life insurance, including a nonvariable contract;
- 1673 (ii) variable contracts, including variable life and annuity, if the managing general
1674 agent has the life insurance line of authority;
- 1675 (iii) accident and health insurance, including a contract issued to a policyholder under

1676 Chapter 7, Nonprofit Health Service Insurance Corporations, or Chapter 8, Health Maintenance
1677 Organizations and Limited Health Plans;

1678 (iv) property insurance;

1679 (v) casualty insurance, including a surety or other bond; and

1680 (vi) personal lines insurance.

1681 (f) A reinsurance intermediary license type includes the following lines of authority:

1682 (i) life insurance, including a nonvariable contract;

1683 (ii) variable contracts, including variable life and annuity, if the reinsurance
1684 intermediary has the life insurance line of authority;

1685 (iii) accident and health insurance, including a contract issued to a policyholder under
1686 Chapter 7, Nonprofit Health Service Insurance Corporations, or Chapter 8, Health Maintenance
1687 Organizations and Limited Health Plans;

1688 (iv) property insurance;

1689 (v) casualty insurance, including a surety or other bond; and

1690 (vi) personal lines insurance.

1691 (g) A person who holds a license under Subsection (2)(a) has the qualifications
1692 necessary to act as a holder of a license under Subsection (2)(c), except that the person may not
1693 act under Subsection (2)(c)(viii) or (ix).

1694 (3) (a) The commissioner may by rule recognize other producer, surplus lines producer,
1695 limited line producer, consultant, managing general agent, or reinsurance intermediary lines of
1696 authority as to kinds of insurance not listed under Subsections (2)(a) through (f).

1697 (b) Notwithstanding Subsection (3)(a), for purposes of title insurance the Title and
1698 Escrow Commission may by rule, with the concurrence of the commissioner and subject to
1699 Section 31A-2-404, recognize other categories for an individual title insurance producer or
1700 agency title insurance producer line of authority not listed under Subsection (2)(a)(vi).

1701 (4) The variable contracts line of authority requires:

1702 (a) for a producer, licensure by the Financial Industry Regulatory Authority as a:

1703 (i) registered broker-dealer; or

1704 (ii) broker-dealer agent, with a current registration with a broker-dealer; and

1705 (b) for a consultant, registration with the Securities and Exchange Commission or
1706 licensure by the Utah Division of Securities as an:

1707 (i) investment adviser; or
1708 (ii) investment adviser representative, with a current association with an investment
1709 adviser.

1710 (5) A surplus lines producer is a producer who has a surplus lines license.

1711 Section 10. Section **31A-23a-204** is amended to read:

1712 **31A-23a-204. Special requirements for title insurance producers and agencies.**

1713 An individual title insurance producer or agency title insurance producer shall be
1714 licensed in accordance with this chapter, with the additional requirements listed in this section.

1715 (1) (a) A person that receives a new license under this title as an agency title insurance
1716 producer shall at the time of licensure be owned or managed by at least one individual who is
1717 licensed for at least three of the five years immediately preceding the date on which the agency
1718 title insurance producer applies for a license with both:

1719 (i) [~~a-search~~] a title examination line of authority; and
1720 (ii) an escrow line of authority.

1721 (b) An agency title insurance producer subject to Subsection (1)(a) may comply with
1722 Subsection (1)(a) by having the agency title insurance producer owned or managed by:

1723 (i) one or more individuals who are licensed with the [~~search~~] title examination line of
1724 authority for the time period provided in Subsection (1)(a); and
1725 (ii) one or more individuals who are licensed with the escrow line of authority for the
1726 time period provided in Subsection (1)(a).

1727 (c) A person licensed as an agency title insurance producer shall at all times during the
1728 term of licensure be owned or managed by at least one individual who is licensed for at least
1729 three years within the preceding five-year period with both:

1730 (i) [~~a-search~~] a title examination line of authority; and
1731 (ii) an escrow line of authority.

1732 (d) The Title and Escrow Commission may by rule, subject to Section 31A-2-404,
1733 exempt an attorney with real estate experience from the experience requirements in Subsection
1734 (1)(a).

1735 (e) An individual who satisfies the requirements of this Subsection (1) is known as a
1736 "qualifying licensee." At any given time, an individual may be a qualifying licensee for not
1737 more than two agency title insurance producers.

1738 (2) (a) An individual title insurance producer or agency title insurance producer
1739 appointed by an insurer shall maintain:

1740 (i) a fidelity bond;

1741 (ii) a professional liability insurance policy, including employee and owner theft and
1742 cybertheft insurance policy; or

1743 (iii) a financial protection:

1744 (A) equivalent to that described in Subsection (2)(a)(i) or (ii); and

1745 (B) that the commissioner considers adequate.

1746 (b) The bond, insurance, or financial protection required by this Subsection (2):

1747 (i) shall be supplied under a contract approved by the commissioner to provide
1748 protection against the improper performance of any service in conjunction with the issuance of
1749 a contract or policy of title insurance and escrow services; and

1750 (ii) be in a face amount no less than [~~\$50,000~~] \$1,000,000.

1751 (c) The Title and Escrow Commission may by rule, subject to Section 31A-2-404,
1752 exempt individual title insurance producer or agency title insurance producers from the
1753 requirements of this Subsection (2) upon a finding that, and only so long as, the required policy
1754 or bond is generally unavailable [~~at reasonable rates~~].

1755 (3) An individual title insurance producer or agency title insurance producer appointed
1756 by an insurer may maintain a reserve fund to the extent money was deposited before July 1,
1757 2008, and not withdrawn to the income of the individual title insurance producer or agency title
1758 insurance producer.

1759 (4) An examination for licensure shall include questions regarding the [~~search and~~] title
1760 examination of title to real property.

1761 (5) (a) An individual title insurance producer may not perform the functions of escrow
1762 unless the individual title insurance producer has been examined on the fiduciary duties and
1763 procedures involved in those functions.

1764 (b) (i) An escrow agent acts only upon specific mutual written instructions from the
1765 principals to an escrow defining the principals to an escrow's intentions.

1766 (ii) An escrow agent acts upon mutual written instruction in behalf of and not in the
1767 place of principals to an escrow. An escrow agent does not have discretionary authority.

1768 (iii) Once events occur or conditions are met and performed or waived, in strict

compliance with the mutual written escrow instructions, the escrow agent has accomplished its primary duty of faithfully executing the instructions given to it by the principals to the escrow.

(iv) Although an escrow is privileged and confidential in nature, an escrow agent owes a duty to communicate to a principal to an escrow knowledge acquired within the course and scope of the escrow relationship established by the mutual escrow instructions with respect to a material fact that might affect a principal to an escrow's decision as to the pending transaction. Any detrimental or new information made known to the escrow agent and affecting a principal to an escrow should be disclosed to the principal to an escrow.

(v) An escrow agent may not provide any information to a third party concerning an escrow without approval of the one or more principals to the escrow. If the third party is involved with the escrow but not a principal to the escrow, such as a principal broker, as defined in Section 61-2f-102, the escrow agent functions for that third party as a custodian with the duty to act in good faith and consistent with the standard of care applicable to escrow agents.

(vi) When the escrow is completed and closed, the escrow agent becomes the agent for each principal to the escrow with respect to those things in escrow to which the principals have respectively become entitled.

(vii) An escrow agent is prohibited from offering legal advice and shall recommend that all parties consult an attorney.

(viii) An escrow agent is a limited dual agent and fiduciary of the principals to the escrow. The escrow agent acts to ensure that the principals to the escrow comply with the terms and conditions of the contract or mutual escrow instructions.

(6) The Title and Escrow Commission may adopt rules, subject to Section 31A-2-404, [after consulting with the commissioner] and after consulting with the commissioner's test administrator, establishing an examination for a license that will satisfy this section.

(7) (a) A license may be issued to an individual title insurance producer or agency title insurance producer who has qualified:

[(a)] (i) to perform only [searches and] title examinations of title as specified in Subsection (4);

[(b)] (ii) to handle only escrow arrangements as specified in Subsection (5); or

[(c)] (iii) to act as a title marketing representative.

1800 (b) An employee of a title insurer or an agency title insurance producer is not required
1801 to obtain an individual license unless the employee:

1802 (i) is a qualifying licensee;

1803 (ii) is a title marketing representative; or

1804 (iii) is an employee who sells, solicits, negotiates insurance, or binds or commits
1805 coverage.

1806 (8) (a) A person licensed to practice law in Utah is exempt from the requirements of
1807 Subsections (2) and (3) if that person issues 12 or less policies in any 12-month period.

1808 (b) In determining the number of policies issued by a person licensed to practice law in
1809 Utah for purposes of Subsection (8)(a), if the person licensed to practice law in Utah issues a
1810 policy to more than one party to the same closing, the person is considered to have issued only
1811 one policy.

1812 (9) A person licensed to practice law in Utah, whether exempt under Subsection (8) or
1813 not, shall maintain a trust account separate from a law firm trust account for all title and real
1814 estate escrow transactions.

1815 Section 11. Section **31A-23a-406** is amended to read:

1816 **31A-23a-406. Title insurance producer's business.**

1817 (1) An individual title insurance producer or agency title insurance producer may do
1818 escrow involving real property transactions if all of the following exist:

1819 (a) the individual title insurance producer or agency title insurance producer is licensed
1820 with:

1821 (i) the title line of authority; and

1822 (ii) the escrow subline of authority;

1823 (b) the individual title insurance producer or agency title insurance producer is
1824 appointed by a title insurer authorized to do business in the state;

1825 (c) the individual title insurance producer or agency title insurance producer issues one
1826 or more of the following as part of the transaction:

1827 (i) an owner's policy of title insurance; or

1828 (ii) a lender's policy of title insurance;

1829 (d) money deposited with the individual title insurance producer or agency title
1830 insurance producer in connection with any escrow:

1831 (i) is deposited:
1832 (A) in a federally insured financial institution; and
1833 (B) in a trust account that is separate from all other trust account money that is not
1834 related to real estate transactions;
1835 (ii) is the property of the one or more persons entitled to the money under the
1836 provisions of the escrow; and
1837 (iii) is segregated escrow by escrow in the records of the individual title insurance
1838 producer or agency title insurance producer;
1839 (e) earnings on money held in escrow may be paid out of the escrow account to any
1840 person in accordance with the conditions of the escrow;
1841 (f) the escrow does not require the individual title insurance producer or agency title
1842 insurance producer to hold:
1843 (i) construction money; or
1844 (ii) money held for exchange under Section 1031, Internal Revenue Code; and
1845 (g) the individual title insurance producer or agency title insurance producer shall
1846 maintain a physical office in Utah staffed by a person with an escrow subline of authority who
1847 processes the escrow.
1848 (2) Notwithstanding Subsection (1), an individual title insurance producer or agency
1849 title insurance producer may engage in the escrow business if:
1850 (a) the escrow involves:
1851 (i) a mobile home;
1852 (ii) a grazing right;
1853 (iii) a water right; or
1854 (iv) other personal property authorized by the commissioner; and
1855 (b) the individual title insurance producer or agency title insurance producer complies
1856 with this section except for Subsection (1)(c).
1857 (3) Money held in escrow:
1858 (a) is not subject to any debts of the individual title insurance producer or agency title
1859 insurance producer;
1860 (b) may only be used to fulfill the terms of the individual escrow under which the
1861 money is accepted; and

1862 (c) may not be used until the conditions of the escrow are met.

1863 (4) Assets or property other than escrow money received by an individual title
1864 insurance producer or agency title insurance producer in accordance with an escrow shall be
1865 maintained in a manner that will:

1866 (a) reasonably preserve and protect the asset or property from loss, theft, or damages;
1867 and

1868 (b) otherwise comply with the general duties and responsibilities of a fiduciary or
1869 bailee.

1870 (5) (a) A check from the trust account described in Subsection (1)(d) may not be
1871 drawn, executed, or dated, or money otherwise disbursed unless the segregated escrow account
1872 from which money is to be disbursed contains a sufficient credit balance consisting of collected
1873 and cleared money at the time the check is drawn, executed, or dated, or money is otherwise
1874 disbursed.

1875 (b) As used in this Subsection (5), money is considered to be "collected and cleared,"
1876 and may be disbursed as follows:

1877 (i) cash may be disbursed on the same day the cash is deposited;

1878 (ii) a wire transfer may be disbursed on the same day the wire transfer is deposited; and

1879 (iii) the proceeds of one or more of the following financial instruments may be

1880 disbursed on the same day the financial instruments are deposited if received from a single
1881 party to the real estate transaction and if the aggregate of the financial instruments for the real
1882 estate transaction is less than \$10,000:

1883 (A) a cashier's check, certified check, or official check that is drawn on an existing
1884 account at a federally insured financial institution;

1885 (B) a check drawn on the trust account of a principal broker or associate broker
1886 licensed under Title 61, Chapter 2f, Real Estate Licensing and Practices Act, if the individual
1887 title insurance producer or agency title insurance producer has reasonable and prudent grounds
1888 to believe sufficient money will be available from the trust account on which the check is
1889 drawn at the time of disbursement of proceeds from the individual title insurance producer or
1890 agency title insurance producer's escrow account;

1891 (C) a personal check not to exceed \$500 per closing; or

1892 (D) a check drawn on the escrow account of another individual title insurance producer

or agency title insurance producer, if the individual title insurance producer or agency title insurance producer in the escrow transaction has reasonable and prudent grounds to believe that sufficient money will be available for withdrawal from the account upon which the check is drawn at the time of disbursement of money from the escrow account of the individual title insurance producer or agency title insurance producer in the escrow transaction.

(c) A check or deposit not described in Subsection (5)(b) may be disbursed:

(i) within the time limits provided under the Expedited Funds Availability Act, 12 U.S.C. Sec. 4001 et seq., as amended, and related regulations of the Federal Reserve System; or

(ii) upon notification from the financial institution to which the money has been deposited that final settlement has occurred on the deposited financial instrument.

(6) An individual title insurance producer or agency title insurance producer shall maintain a record of a receipt or disbursement of escrow money.

(7) An individual title insurance producer or agency title insurance producer shall comply with:

(a) Section 31A-23a-409;

(b) Title 46, Chapter 1, Notaries Public Reform Act; and

(c) any rules adopted by the Title and Escrow Commission, subject to Section 31A-2-404, that govern escrows.

(8) If an individual title insurance producer or agency title insurance producer conducts ~~[a search]~~ a title examination for real estate located in the state, the individual title insurance producer or agency title insurance producer shall conduct a reasonable ~~[search]~~ title examination of the public records.

Section 12. Section **31A-23a-407** is amended to read:

31A-23a-407. Liability of title insurers for acts of escrow.

~~[Any title company, represented by one or more]~~

In addition to liability under Section 31A-23a-405:

(1) (a) A title insurer, represented by an individual title insurance ~~[producers]~~ producer appointed by ~~[an]~~ the title insurer or represented by an agency title insurance ~~[producers, is directly and primarily]~~ producer, is strictly liable to others dealing with the individual title insurance ~~[producers]~~ producer or agency title insurance ~~[producers]~~ producer for the receipt and disbursement of ~~[funds]~~ money deposited in ~~[escrows]~~ escrow with the individual title

insurance ~~[producers appointed by an insurer]~~ producer or agency title insurance ~~[producers in all those transactions where]~~ producer in a transaction when a commitment ~~[or binder]~~ for or policy or contract of title insurance of that title insurer ~~[has been]~~ is ordered, or a preliminary report of the title insurer ~~[has been]~~ is issued or distributed. ~~[This liability does not modify, mitigate, impair, or affect the contractual obligations between the individual title insurance producers or agency title insurance producers and the title insurer.]~~

(b) The liability under Subsection (1)(a) may not be modified or impaired by a contractual obligation between the insurer and a agency title insurance producer or individual title insurance producer. A contract may not include language that limits the insurer's liability for the receipt and disbursement of money deposited in escrow with the agency title insurance producer and the individual title insurance producer if the agency title insurance producer and the individual title insurance producer conduct the receipt and disbursement of money in conjunction with the issuance of title insurance. Indemnification language is permissible.

(2) An insurer shall annually audit an individual title insurance producer or agency title insurer producer appointed by the insurer and report the findings to the commissioner in an affidavit attesting to the findings of the audit.

(3) If an insurer establishes a shortage of money in one or more trust accounts, the insurer shall:

(a) immediately notify the commissioner and the other insurers known by the insurer to have appointed the individual title insurance producer or agency title insurance producer;

(b) supervise or suspend the title operations of the individual title insurance producer or agency title insurance producer until the shortage is remedied, and if the shortage of money cannot be remedied and it affects the viability of the title operations, develop an orderly plan for dissolution or recovery to be approved by the commissioner;

(c) if the shortage cannot be remedied, cancel for cause the appointment of the individual title insurance producer or agency title insurance producer; and

(d) notify the commissioner of a cancellation of the appointment for cause.

(4) For a cancellation of the appointment of an agency title insurance producer that is not described in Subsection (3), for cause or not for cause, notwithstanding Section 31A-23a-115, the insurer shall notify the commissioner and attest in writing the one or more reasons for the cancellation.

(5) If an agency title insurance producer that is underwritten by more than one insurer experiences losses, a court may equitably apportion the losses among the insurers if the insurers are unable to determine the apportionment.

Section 13. Section **31A-23a-504** is amended to read:

31A-23a-504. Sharing commissions.

(1) (a) Except as provided in Subsection 31A-15-103(3), a licensee under this chapter or an insurer may only pay consideration or reimburse out-of-pocket expenses to a person if the licensee knows that the person is licensed under this chapter as to the particular type of insurance to act in Utah as:

- (i) a producer;
- (ii) a limited line producer;
- (iii) a consultant;
- (iv) a managing general agent; or
- (v) a reinsurance intermediary.

(b) A person may only accept commission compensation or other compensation as a person described in Subsections (1)(a)(i) through (v) that is directly or indirectly the result of an insurance transaction if that person is licensed under this chapter to act as described in Subsection (1)(a).

(2) (a) Except as provided in Section 31A-23a-501, a consultant may not pay or receive a commission or other compensation that is directly or indirectly the result of an insurance transaction.

(b) A consultant may share a consultant fee or other compensation received for consulting services performed within Utah only:

- (i) with another consultant licensed under this chapter; and
- (ii) to the extent that the other consultant contributed to the services performed.

(3) This section does not prohibit:

(a) the payment of renewal commissions to former licensees under this chapter, former Title 31, Chapter 17, or their successors in interest under a deferred compensation or agency sales agreement;

(b) compensation paid to or received by a person for referral of a potential customer that seeks to purchase or obtain an opinion or advice on an insurance product if:

1986 (i) the person is not licensed to sell insurance;
1987 (ii) the person does not sell or provide opinions or advice on the product; and
1988 (iii) the compensation does not depend on whether the referral results in a purchase or
1989 sale; or

1990 (c) the payment or assignment of a commission, service fee, brokerage, or other
1991 valuable consideration to an agency or a person who does not sell, solicit, or negotiate
1992 insurance in this state, unless the payment would constitute an inducement or commission
1993 rebate under Section 31A-23a-402 or 31A-23a-402.5.

1994 (4) (a) In selling a policy of title insurance, sharing of commissions under Subsection
1995 (1) may not occur if it will result in:

1996 (i) an unlawful rebate;
1997 (ii) compensation in connection with controlled business; or
1998 (iii) payment of a forwarding fee or finder's fee.

1999 (b) A person may share compensation for the issuance of a title insurance policy only
2000 to the extent that the person contributed to the ~~[search and]~~ title examination of the title or
2001 other services connected with the title insurance policy.

2002 (5) This section does not apply to:

2003 (a) a bail bond producer or bail enforcement agent as defined in Section 31A-35-102
2004 and as described in Subsection 31A-23a-106(2)(c);

2005 (b) a travel retailer registered pursuant to Part 9, Travel Insurance Act; or

2006 (c) a nonlicensed individual employee or authorized representative of a licensed
2007 limited line producer who holds one or more of the following limited lines of authority as
2008 described in Subsection 31A-23a-106(2)(c):

2009 (i) car rental related insurance;
2010 (ii) self-service storage insurance;
2011 (iii) portable electronics insurance; or
2012 (iv) travel insurance.

2013 Section 14. Section **31A-41-202** is amended to read:

2014 **31A-41-202. Assessments.**

2015 (1) Beginning January 1, 2009, an agency title insurance producer licensed under this
2016 title shall pay an annual assessment determined by the commission by rule made in accordance

2017 with [~~Title 63G, Chapter 3, Utah Administrative Rulemaking Act~~] Section 31A-2-404, except
2018 that the annual assessment:

2019 (a) may not exceed \$1,000; and

2020 (b) shall be determined on the basis of title insurance premium volume.

2021 (2) Beginning January 1, 2009, an individual who applies for a license or renewal of a
2022 license as an individual title insurance producer, shall pay in addition to any other fee required
2023 by this title, an assessment not to exceed \$20, as determined by the commission by rule made
2024 in accordance with [~~Title 63G, Chapter 3, Utah Administrative Rulemaking Act~~] Section
2025 31A-2-404, except that if the individual holds more than one license, the total of all
2026 assessments under this Subsection (2) may not exceed \$20 in a fiscal year.

2027 (3) (a) To be licensed as an agency title insurance producer on or after July 1, 2008, a
2028 person shall pay to the department an assessment of \$1,000 before the day on which the person
2029 is licensed as a title insurance agency.

2030 (b) (i) By no later than July 15, 2008, the department shall assess on an agency title
2031 insurance producer licensed as of June 30, 2008, an amount equal to the greater of:

2032 (A) \$1,000; or

2033 (B) subject to Subsection (3)(b)(ii), 2% of the balance as of December 31, 2007, in the
2034 agency title insurance producer's reserve account described in Subsection 31A-23a-204(3).

2035 (ii) The department may assess on an agency title insurance producer an amount less
2036 than 2% of the balance described in Subsection (3)(b)(i)(B) if:

2037 (A) before issuing the assessments under this Subsection (3)(b) the department
2038 determines that the total of all assessments under Subsection (3)(b)(i) will exceed \$250,000;

2039 (B) the amount assessed on the agency title insurance producer is not less than \$1,000;
2040 and

2041 (C) the department reduces the assessment in a proportionate amount for agency title
2042 insurance producers assessed on the basis of the 2% of the balance described in Subsection
2043 (3)(b)(i)(B).

2044 (iii) An agency title insurance producer assessed under this Subsection (3)(b) shall pay
2045 the assessment by no later than August 1, 2008.

2046 (4) The department may not assess a title insurance licensee an assessment for
2047 purposes of the fund if that assessment is not expressly provided for in this section.

2048 Section 15. Section **31A-41-203** is amended to read:
2049 **31A-41-203. Use of money.**
2050 (1) Money in the fund may be used to pay claims made under Part 3, Claims on Fund.
2051 (2) (a) Except as limited by Subsection (2)(b), money in the fund in excess of \$250,000
2052 may be used by the commissioner, with the consent of the commission, to:
2053 (i) investigate violations of this chapter related to fraud by a title insurance licensee;
2054 (ii) conduct education and research in the field of title insurance; or
2055 (iii) examine a title insurance licensee's:
2056 (A) escrow and trust account;
2057 (B) [~~search and examine~~] title examination procedures; or
2058 (C) compliance with applicable statutes and rules.
2059 (b) The commissioner may not use more than 75% of money collected under this
2060 chapter in a fiscal year from assessments and interest for the purposes outlined in this
2061 Subsection (2).
2062 (3) The disclosure of an examination conducted under this section is governed by
2063 Section 31A-2-204.